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FEDERAL REGISTER

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Title 3—The President

PROCLAMATION 4097

Wright Brothers Day, 1971

By the President of the United States of America

A Proclamation

The history of man is filled with dreams of flying. Throughout the ages, his fascination with the speed and grace of birds soaring through the skies led man to wish that he, too, might master the secrets of flight.

On December 17, 1903, Wilbur and Orville Wright answered this wish when they made the first successful flight in a heavier-than-air, mechanically propelled airplane.

Although that first flight lasted only twelve seconds, it freed man from the bonds which since his first step had held him to the earth. In that one flight across 120 feet of North Carolina sand, man caught hold of what before had been a mere dream—though our oldest and most daring dream. No matter what progress is made in our ability to fly through the air and the heavens, that first flight will always mark an epic moment in the history of man.

To commemorate the achievements of the Wright Brothers, the Congress, by a joint resolution of December 17, 1963 (77 Stat. 402), designated the seventeenth day of December of each year as Wright Brothers Day and requested the President to issue annually a proclamation inviting the people of the United States to observe that day with appropriate ceremonies and activities.

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, do hereby call upon the people of this Nation, and their local and National Government officials, to observe Wright Brothers Day, December 17, 1971, with appropriate ceremonies and activities, both to recall the accomplishments of the Wright Brothers and to provide a stimulus to aviation in this country and throughout the world.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of December, in the year of our Lord nineteen hundred seventy-one, and of the Independence of the United States of America the one hundred ninety-sixth.

[FR Doc.71-18355 Filed 12-13-71; 10:05 am]

Rules and Regulations

Title 7—AGRICULTURE

Chapter IX—Consumer and Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

[Navel Orange Reg. 242, Amdt. 1]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907, 35 F.R. 16359), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restriction on the handling of Navel oranges grown in Arizona and designated part of California.

(b) *Order, as amended.* The provisions in paragraph (b)(1) (i) and (iii) of § 907.542 (Navel Orange Regulation 242, 36 F.R. 22975) during the period December 3, 1971 through December 9, 1971, are hereby amended to read as follows:

§ 907.542 Navel Orange Regulation 242.

* * * * *

(b) *Order.* (1) * * *

(i) District 1: 987,000 cartons;

* * * * *

(iii) District 3: 63,000 cartons.

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 8, 1971.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[FR Doc.71–18245 Filed 12–13–71;8:48 am]

[Lemon Reg. 510, Amdt. 1]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910; 36 F.R. 9061), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this amendment until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restriction on the handling of lemons grown in California and Arizona.

(b) *Order, as amended.* The provision in paragraph (b)(1) of § 910.810 (Lemon Regulation 510, 36 F.R. 23135) during the period December 5, through December 11, 1971, is hereby amended to read as follows:

§ 910.810 Lemon Regulation 510.

* * * * *

(b) *Order.* (1) * * * 225,000 cartons.

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 8, 1971.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[FR Doc.71–18246 Filed 12–13–71;8:48 am]

PART 966—TOMATOES GROWN IN FLORIDA

Expenses and Rate of Assessment

Notice of rule making regarding a proposed increase in the expenses and rate of assessment to be effective under Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR Part 966), regulating the handling of tomatoes grown in designated counties in the State of Florida, was published in the December 1, 1971, issue of the FEDERAL REGISTER (36 F.R. 22831). This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.). The notice afforded interested persons an opportunity to file data, views, or arguments pertaining thereto not later than the fifth day after its publication in the FEDERAL REGISTER.

Within the period specified, no comments were filed by affected handlers. However, comments were received by the Department from the West Mexico Vegetable Distributors Association of Nogales, Ariz., asking the reasons for the proposed increase in budget and assessment.

The expenses and rate of assessment for the fiscal period August 1, 1971, through July 31, 1972, for operation of the Florida tomato marketing order were approved September 30, 1971.

Subsequently, the Florida tomato industry was involved in an administrative hearing called by the Secretary to review certain provisions of the marketing order and proposed amendments thereto. This hearing lasted some 5 weeks which was substantially in excess of the time it was expected to take. As a result, expenditures of committee funds far exceeded the amount budgeted for expenses attendant to such hearings and participation therein by committee members and staff. There also was an unanticipated expense necessitated by the retaining of counsel to represent the committee at such hearing. The increase in assessments was proposed to pay for these unforeseen costs.

Findings. After consideration of all relevant matters, including the proposals set forth in the aforesaid notice which were recommended by the Florida Tomato Committee, established pursuant to the said marketing agreement and order, § 966.208, *Expenses and rate of assessment* (36 F.R. 19437), is hereby amended to read as follows:

§ 966.208 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred during the fiscal

period ending July 31, 1972, by the Florida Tomato Committee for its maintenance and functioning, and for such purposes as the Secretary determines to be appropriate will amount to $145,000.

(b) The rate of assessment to be paid by each handler in accordance with the marketing agreement and this part shall be one cent ($0.01) per 40-pound container of tomatoes, or equivalent quantity, handled by him as the first handler thereof during said fiscal period.

(c) Unexpended income in excess of expenses for the fiscal period ending July 31, 1972, may be carried over as a reserve.

(d) Terms used in this section have the same meaning as when used in the said marketing agreement and this part.

It is hereby found that good cause exists for not postponing the effective date of this amendment until 30 days after its publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) the relevant provisions of said marketing agreement and this part require that the rate of assessment fixed for a particular fiscal period shall be applicable to all assessable tomatoes from the beginning of such period, and (2) the current fiscal period began on August 1, 1971, and the rate of assessment herein fixed will automatically apply to all assessable tomatoes beginning with such date.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 9, 1971.

FLOYD F. HEDLUND,
Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[FR Doc.71–18268 Filed 12–13–71;8:50 am]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter III—Consumer and Marketing Service (Meat Inspection), Department of Agriculture

SUBCHAPTER A—MEAT INSPECTION REGULATIONS

PART 316—MARKING PRODUCTS AND THEIR CONTAINERS

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

Marking of Certain Beef Fat; Restrictions on Use of Certain Nitrates and Nitrites

Statement of Considerations. Sections 316.8 and 316.9 of the Federal meat inspection regulations (9 CFR 316.8 and 316.9) issued under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) have required federally inspected and passed beef cod fat and beef kidney fat to be marked with the official inspection legend, except that products without such markings could be moved between official establishments under official seal of the Department and such unmarked products could be removed from official establishments in closed containers bearing the official inspection legend and all other required label information. Such fats bearing official inspection legends were eligible for distribution from an official establishment and in commerce. Under the amendments made hereby beef cod fat and beef kidney fat prepared at official establishments will not receive official inspection legends and they will be eligible for entry into official establishments or other distribution under the Act only if they are moved under Department seal between official establishments or are in properly labeled closed containers. It appears that this arrangement will adequately meet the needs of the meat industry and consumers

The Service and Regulatory Announcements of November 1925 (S.R.A.–B.A.I. 223–102) permitted meats to be cured with sodium nitrite to fix the red color provided that the finished product did not contain sodium nitrite in excess of 200 parts per million. Prior to this announcement, only sodium nitrate and potassium nitrate were acceptable for use in curing to fix the red color of meat. The current regulations permit meats to be cured with sodium nitrite or potassium nitrite, sodium nitrate or potassium nitrate, or a combination of these substances, provided that their use "shall not result in more than 200 parts per million nitrite in finished product." Since it was intended that the use of these substances shall not result in more than 200 parts per million calculated as sodium nitrite, rather than 200 parts per million calculated as the nitrite radical or ion in the finished product, this amendment reflects that intent.

Under the authority of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), Parts 316 and 318 of the Federal meat inspection regulations (9 CFR Parts 316 and 318) are amended as follows:

1. Section 316.9 is amended by deleting the phrase "the beef cod fat and beef kidney fat" and making clarifying changes in the first sentence of paragraph (b) and by adding a new paragraph (d) to read as follows:

§ 316.9 Products to be marked with official marks.

(a) * * *

(b) Except as provided otherwise in § 316.8, each primal part of a carcass and each liver, beef tongue, and beef heart which has been inspected and passed shall be marked with the official inspection legend containing the number of the official establishment before it leaves the establishment in which it is first inspected and passed, and each such inspected and passed product shall be marked with the official inspection legend containing the number of the official establishment where it was last prepared.

* * * * *

(d) Inspected and passed parts of carcasses which are not marked with the official inspection legend under this section shall not enter any official establishment or be sold, transported, or offered for sale or transportation, in commerce, except as provided in § 316.8.

3. In subparagraph (4) of paragraph (c) of § 318.7 that portion of the chart dealing with sodium or potassium nitrite as a curing agent is revised to read as follows:

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
* * *	* * *	* * *	* * *	* * *
Curing agents	Sodium or potassium nitrite (supplies of sodium nitrite and potassium nitrite and mixtures containing them must be kept securely under the care of a responsible employee of the establishment. The specific nitrite content of such supplies must be known and clearly marked accordingly).	To fix color	do	2 lbs. to 100 gals. pickle at 10 percent pump level; 1 oz. to 100 lbs. meat (dry cure); ¼ oz. to 100 lbs. chopped meat and/or meat byproduct. The use of nitrites, nitrates, or combination shall not result in more than 200 parts per million calculated as sodium nitrite, in finished product.

* * * * *

(Sec. 21, 34 Stat. 1260, as amended 21 U.S.C. 621; 29 F.R. 16210, as amended; 36 F.R. 13169)

The foregoing amendments are made pursuant to recommendations of interested persons and are deemed appropriate, and it does not appear that further information on this matter would be made available to the Department by public participation in this rulemaking proceeding. Therefore, in accordance with the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that such public rule making procedure with respect to these amendments is impracticable and unnecessary.

These amendments shall become effective 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., on December 8, 1971.

CLAYTON YEUTTER,
Administrator, Consumer and Marketing Service.

[FR Doc.71–18249 Filed 12–13–71;8:48 am]

PART 331—SPECIAL PROVISIONS FOR DESIGNATED STATES AND TERRITORIES; AND FOR DESIGNATION OF ESTABLISHMENTS WHICH ENDANGER PUBLIC HEALTH AND FOR SUCH DESIGNATED ESTABLISHMENTS

Designation of Kentucky Under the Federal Meat Inspection Act

Statement of considerations. Subsection 301(c)(3) of the Federal Meat Inspection Act (21 U.S.C. 661(c)(3)) authorizes the Secretary of Agriculture to designate any State, upon 30 days' notice to the Governor and publication of the designation order in the FEDERAL REGISTER, as a State in which the requirements of titles I and IV of said Act shall apply to intrastate operations and transactions, and to persons, firms, and corporations engaged therein, with respect to meat products and other articles and animals subject to the Act, if he determines that the State involved is not effectively enforcing requirements, at least equal to those imposed under titles I and IV, with respect to establishments within the State at which cattle, sheep, swine, goats, or equines are slaughtered, or their carcasses, or parts or products thereof, are prepared for use as human food, solely for distribution within such State.

The Secretary heretofore determined that the State of Kentucky had developed and activated the prescribed requirements. However, the Secretary has now determined that Kentucky currently is not effectively enforcing the prescribed requirements, and he has notified the Governor of the State of such determination and of the intended designation of the State. Therefore, notice is hereby given that the Secretary of Agriculture designates said State under section 301(c) of the Act. Upon the expiration of 30 days after publication of this notice in the FEDERAL REGISTER, the provisions of titles I and IV of the Act shall apply to intrastate operations and transactions in said State and to persons, firms, and corporations engaged therein, to the same extent and in the same manner as if such operations and transactions were conducted in or for "commerce," within the meaning of the Act, and any establishment in Kentucky which conducts any slaughtering or preparation of carcasses or parts or products thereof as described above must have Federal inspection or cease its operations, unless it qualifies for an exemption under section 23(a) or 301(c) of the Act. The exemption provisions of the Act are very limited.

Therefore, the operator of each such establishment who desires to continue such operations after designation of the State becomes effective should immediately communicate with the Regional Director for Meat and Poultry Inspection, listed below, for information concerning the requirements and exemptions under the Act and application for inspection and a survey of the establishment:

Dr. G. Harner, Director, Mid-Atlantic Region for Meat and Poultry Program, Post Office Box 25231, Raleigh, NC 27611.
Telephone: AC 919/755-4220

Accordingly, section 331.2 of the regulations under the Federal Meat Inspection Act (9 CFR 331.2) is amended pursuant to said Act by adding the following State name (in alphabetical order) and effective date of designation to the list set forth in said section:

State	*Effective date of designation*
Kentucky	Jan. 14, 1972

This amendment of the regulations is necessary to reflect the determination of the Secretary of Agriculture under section 301(c) of the Federal Meat Inspection Act. It does not appear that public participation in this rule making proceeding would make additional information available to the Secretary. Therefore, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that such public procedure is impracticable and unnecessary, and good cause is found for making this amendment effective less than 30 days after publication in the FEDERAL REGISTER.

This amendment and the notice given hereby shall become effective upon publication in the FEDERAL REGISTER (12-14-71).

Done at Washington, D.C., on December 8, 1971.

J. PHIL CAMPBELL,
Under Secretary.

[FR Doc.71-18208 Filed 12-13-71;8:45 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airspace Docket No. 71-SW-69]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the Raton, N. Mex., transition area.

A review of the existing Raton, N. Mex., transition area under existing Terminal Instrument Procedures (TERP's) criteria indicates that the width of the southwesterly extension to the 700-foot transition area should be widened from 7 miles to 10 miles.

As the extent of airspace affected is considered minor and will not place any undue burden on any person, notice and public procedures are considered unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., February 3, 1972, as hereinafter set forth.

In § 71.181 (36 F.R. 2140) the Raton, N. Mex., 700-foot transition area is amended by deleting "within 3.5 miles each side of the Cimarron VORTAC 050° radial" and substituting "within 5 miles each side of the Cimarron VORTAC 050° radial" therefor.

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348); sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Fort Worth, Tex., on December 2, 1971.

R. V. REYNOLDS,
Acting Director, Southwest Region.

[FR Doc.71-18239 Filed 12-13-71;8:47 am]

Chapter II—Civil Aeronautics Board

SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. ER-717, Amdt. 3]

PART 217—REPORTING DATA PERTAINING TO CIVIL AIRCRAFT CHARTERS PERFORMED BY FOREIGN AIR CARRIERS

Reporting Instructions; Correction

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 9th day of December 1971.

By ER-710, effective January 7, 1972, and published at 36 F.R. 23050, the Board amended Part 217 of the Economic Regulations so as to revise and clarify the reporting requirements for CAB Form 217. In § 217.6, entitled "Reporting instructions," the reference to study group charters is incorrectly numbered § 217.6(b)(6), whereas the correct number of the paragraph in question is § 217.6(b)(7). This amendment corrects the numbering of the rule.

This regulation is issued by the undersigned pursuant to a delegation of authority from the Board to the General Counsel in 14 CFR § 385.19, and shall become effective on January 3, 1972. Procedures for review of the amendment by the Board are set forth in Subpart C of Part 385 (14 CFR §§ 385.50 and 385.54).

Accordingly, the Board hereby amends Part 217 of the Economic Regulations (14 CFR Part 217), effective January 3, 1972, as follows:

Amend § 217.6(b) (6) and (7) to read as follows:

§ 217.6 Reporting instructions.

* * * * * * *

(b) * * *

(6) Charter performed for another direct foreign air carrier, as provided in § 212.8(a)(4-a) and § 214.7(a)(1) of this chapter, whichever is applicable, except emergency charters reported under § 212.14 or § 214.5, of this chapter.

(7) Study group charter, as defined in Part 373 of this chapter (Board's Special Regulations).

* * * * *

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324)

By the Civil Aeronautics Board.

[SEAL] R. TENNEY JOHNSON,
General Counsel.

[FR Doc.71-18265 Filed 12-13-71;8:50 am]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER D—HAZARDOUS SUBSTANCES

PART 191—HAZARDOUS SUBSTANCES; DEFINITIONS AND PROCEDURAL AND INTERPRETATIVE REGULATIONS

Baby-Bouncers, Walker-Jumpers, Baby-Walkers, and Other Similar Articles Intended for Use by Children; Correction

In F.R. Doc. 71-16634 appearing at page 21809 in the FEDERAL REGISTER of November 16, 1971, item 10 on page 21810 is corrected by changing "Federal Hazardous Substances Act of 1969" to read "Federal Hazardous Substances Act as amended by the Child Protection and Toy Safety Act of 1969."

Dated: December 1, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.71-18227 Filed 12-13-71;8:46 am]

Title 30—MINERAL RESOURCES

Chapter I—Bureau of Mines, Department of the Interior

SUBCHAPTER O—COAL MINE HEALTH AND SAFETY

PART 75—MANDATORY SAFETY STANDARDS, UNDERGROUND COAL MINES

Location of Approved Self-Rescue Devices

Pursuant to the authority vested in the Secretary of the Interior under section 101(a) of the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91-173), there was published in the FEDERAL REGISTER for May 6, 1971 (36 F.R. 8453), a notice of proposed rule making to amend Part 75, Subchapter O, Chapter I, Title 30, Code of Federal Regulations, by adding § 75.1714-2, which prescribes requirements for the location of approved self-rescue devices which must be readily available to each miner employed in an underground coal mine.

Interested persons were afforded a period of 30 days from the date of publication of the notice in which to submit written comments, suggestions, or objections to the proposed amendment. All of the comments, suggestions, and objections were given careful consideration. Recognizing that the safety of the miner may be impaired while carrying or wearing a self-rescue device at all times, two limited exceptions have been provided so that the miner need not wear or carry the self-rescue device when it is hazardous or when working on or around mobile equipment. The two exceptions will allow the miner to keep the device in a place near, and no greater than 25 feet from, where he is working so that he may be able to readily reach the self-rescuer in an emergency.

Part 75, Title 30, Code of Federal Regulations, Subchapter O—Coal Mine Health and Safety—Mandatory Health and Safety Standards, Underground Coal Mines, is amended by adding § 75.1714-2 as set forth below:

§ 75.1714-2 Approved self-rescue devices; location; requirements.

(a) Except as provided in paragraphs (b) and (c) of this section, self-rescue devices meeting the requirements of § 75.1714 shall be worn or carried on the person of each miner.

(b) Where the wearing or carrying of self-rescue devices meeting the requirements of § 75.1714 is hazardous to a miner, such self-rescue devices shall be located at a distance no greater than 25 feet from such miner.

(c) Where a miner works on or around mobile equipment, self-rescue devices may be placed in a readily accessible location on such equipment.

Effective date. The provisions of § 75.1714-2 shall become effective 45 days after the date of publication in the FEDERAL REGISTER.

HOLLIS M. DOLE,
Assistant Secretary of the Interior.

DECEMBER 9, 1971.

[FR Doc.71-18258 Filed 12-13-71;8:49 am]

PART 75—MANDATORY SAFETY STANDARDS, UNDERGROUND COAL MINES

Notification of Opening Requirements

Pursuant to the authority vested in the Secretary of the Interior under section 101(a) of the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91-173), there was published in the FEDERAL REGISTER for April 13, 1971 (36 F.R. 7016), a notice of proposed rule making to amend Part 75, Subchapter O, Chapter I, Title 30, Code of Federal Regulations by adding § 75.1721 which provides that no development work or production shall be performed in any new underground coal mine proposed to be opened on or after a specified date until: (1) The operator of such mine had notified the Coal Mine Health and Safety District Manager for the district in which the proposed mine is located that the mine will be opened; (2) the operator had submitted to the District Manager certain information and proposed plans required under this section; and (3) all proposed plans submitted by the operator had been approved by the District Manager.

Interested persons were afforded a period of 30 days from the date of publication of the notice in which to submit written comments, suggestions, or objections to the proposed amendment. All of the comments, suggestions and objections received have been given careful consideration. The notice and plan requirements of this section have been clarified to include the reopening or reactivation of abandoned or deactivated coal mines. The plan requirements have been modified to specify that the operator shall submit preliminary plans to the District Manager as soon as practicable, since the necessary information upon which the operator must base plans for roof control, ventilation and methane and dust control, and sealing of abandoned areas is not available prior to the attainment of underground mining experience. All plans must be approved by the District Manager prior to the operator's developing any part of the coalbed. Part 75, Title 30, Code of Federal Regulations, Subchapter O—Coal Mine Health and Safety—Mandatory Health and Safety Standards, Underground Coal Mines, is amended and revised by adding § 75.1721 as set forth below.

Effective date. The provisions of § 75.1721 shall become effective 30 days after the date of publication in the FEDERAL REGISTER.

HOLLIS M. DOLE,
Assistant Secretary of the Interior.

DECEMBER 9, 1971.

§ 75.1721 Opening of new underground coal mines, or reopening and reactivating of abandoned or deactivated coal mines, notification by the operator; requirements.

(a) On and after the effective date of this section, each operator of a new underground coal mine, and a mine which has been abandoned or deactivated and is to be reopened or reactivated, shall prior to opening, reopening or reactivating the mine notify the Coal Mine Health and Safety District Manager for the district in which the mine is located of the approximate date of the proposed or actual opening of such mine. Thereafter, and as soon as practicable, the operator of such mine shall submit all preliminary plans in accordance with paragraph (b) of this section to the District Manager and the operator shall not develop any part of the coalbed in such mine unless and until all preliminary plans have been approved by the District Manager.

(b) The notification required to be submitted in accordance with paragraph (a) of this section shall be in writing

and the preliminary plans shall contain the following:

(1) The name and location of the proposed mine and the Bureau of Mines' mine identification number, if known;

(2) The name and address of the mine operator(s);

(3) The name and address of the principal official designated by the operator as the person who is in charge of health and safety at the mine;

(4) The identification and approximate height of the coalbed to be developed;

(5) The system of mining to be employed;

(6) A proposed roof control plan containing the information specified in § 75.200–5;

(7) A proposed ventilation plan and methane and dust control plan containing the information specified in §§ 75.316–1 and 75.316–2;

(8) A proposed plan for training and retraining containing the information specified in § 75.160–1;

(9) A proposed plan for sealing abandoned areas containing the information specified in § 75.330–1;

(10) A proposed program for searching miners for smoking materials in accordance with the provisions of § 75.1702; and,

(11) A proposed plan for emergency medical assistance and emergency communication in accordance with the provisions of §§ 75.1713–1 and 75.1713–2.

[FR Doc.71–18259 Filed 12–13–71;8:49 am]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 5A—Federal Supply Service, General Services Administration

GUARANTEED MINIMUM QUANTITY, OPTION TO INCREASE QUANTITIES, AND MISCELLANEOUS AMENDMENTS TO CHAPTER

Chapter 5A of Title 41 is amended as follows:

PART 5A–1—GENERAL

The table of contents of Part 5A–1 is amended to add the following entries:

Sec.
5A–1.376 Options.
5A–1.376–1 Applicability.
5A–1.376–2 Exercise of options.

Subpart 5A–1.3—General Policies

Sections 5A–1.376, 5A–1.376–1, and 5A–1.376–2 are added as follows:

§ 5A–1.376 Options.

An option clause is a provision in a contract under which, for a specified time, the Government may elect to purchase additional quantities of the supplies or services called for by the contract, or may elect to extend the period of performance of the contract.

§ 5A–1.376–1 Applicability.

Option clauses may be included in contracts where increased requirements within the period of contract performance are foreseeable. Since options require offerors to guarantee prices for definite periods of time with no guarantee that orders will be placed, their improper use could result in prices which are unfair to either the Government or the contractor.

§ 5A–1.376–2 Exercise of options.

(a) The exercise of an option by the Government requires the contracting officer's written notification to the contractor within the time period specified in the contract.

(b) Options should be exercised only if it is determined that:

(1) Funds are available;

(2) The requirement covered by the option fulfills an existing need of the Government; and

(3) The exercise of the option is most advantageous to the Government, price and other factors considered.

(c) An "Option to Increase Quantities" clause for use in definite quantity contracts is provided in § 5A–7.170–11.

Subpart 5A–1.11—Qualified Products

Section 5A–1.1101–70 is amended as follows:

§ 5A–1.1101–70 Solicitations.

* * * * *

(c) *Special instruction when procuring tires.* Since paragraph 3.9 of Interim Federal Specification ZZ–T–00381L, dated February 27, 1970, makes special provisions for listing of tires on the Qualified Products List, the following statement shall be included in the solicitation immediately above the Qualified Products clause when tires are purchased under that specification.

QUALIFIED PRODUCTS LIST FOR TIRES

Tire manufacturers who wish to add tire brands to the Qualified Products List should review paragraph 3.9, Interim Federal Specification ZZ–T–00381L, dated February 27, 1970, as amended.

PART 5A–7—CONTRACT CLAUSES

The table of contents of Part 5A–7 is amended to add the following entries:

Sec.
5A–7.170–10 Guaranteed minimum quantity.
5A–7.170–11 Option to increase quantities.

Subpart 5A–7.1—Fixed-Price Supply Contracts

1. Section 5A–7.170–10 is added as follows:

§ 5A–7.170–10 Guaranteed minimum quantity.

A clause substantially as follows may be used in solicitations and subsequent requirements-type term contracts, in order to specify a minimum quantity of the total requirements which the Government guarantees to purchase during the contract period.

(a) Clause to be used when Government agrees to purchase a guaranteed percentage of the estimated quantities of all items under the contract.

GUARANTEED MINIMUM QUANTITY

The guaranteed minimum quantity the Government agrees to purchase is _____[1] percent of the estimated quantities shown opposite each destination. In the event an award is made to an offeror for the same stock item for delivery to two or more destinations, the Government's obligation shall be considered to be fulfilled whenever the total guaranteed minimum quantity for the stock item awarded to such offeror has been purchased.

The Contractor shall, forty-five (45) to thirty (30) days prior to the expiration date of the contract and again within ten (10) days following the expiration date of the contract, notify the Contracting Officer by letter of any unordered "Guaranteed Minimum Quantity." The Contractor shall be responsible for timely receipt by the Contracting Officer of such letters. Failure to notify the Contracting Officer within the prescribed times shall relieve the Government of its obligation to order; however, if the Government elects to issue orders for the entire balance of any portion thereof, the Contractor will be obligated to furnish such quantities. The Government reserves the right to defer placing orders for any unordered "Guaranteed Minimum Quantity" for sixty (60) days following the expiration date of the contract.

(b) Clause to be used when Government agrees to order a guaranteed minimum quantity of specific items under the contract.

GUARANTEED MINIMUM QUANTITY

The Government agrees to order the "Guaranteed Minimum Quantity" as stipulated herein. In the event an award is made to an offeror for the same stock item for delivery to two or more destinations, the Government's obligation shall be considered to be fulfilled whenever the total guaranteed minimum quantity for the stock item awarded to such offeror has been purchased.

The Contractor shall, forty-five (45) to thirty (30) days prior to the expiration date of the contract and again within ten (10) days following the expiration date of the contract, notify the Contracting Officer by letter of any unordered "Guaranteed Minimum Quantity." The Contractor shall be responsible for timely receipt by the Contracting Officer of such letters. Failure to notify the Contracting Officer within the prescribed times shall relieve the Government of its obligation to order; however, if the Government elects to issue orders for the entire balance or any portion thereof, the Contractor will be obligated to furnish such quantities. The Government reserves the right to defer placing orders for any unordered "Guaranteed Minimum Quantity" for sixty (60) days following the expiration date of the contract.

2. Section 5A–7.170–11 is added as follows:

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[1] Enter percentage to be designated. Not to exceed 50 percent unless authorized by the Director, Procurement Operations Division, or appropriate Chiefs of Regional Procurement Divisions.

§ 5A–7.170–11 Option to increase quantities.

A clause substantially as follows may be used in definite quantity contracts when increased requirements are considered to be a potential within the period of contract performance, and subsequent competition would be impracticable due to production lead time or delivery requirements.

OPTION TO INCREASES QUANTITIES

(a) The Government reserves the right, at its option, to increase the quantity for each item awarded by not more than _____[1] percent, and the successful offeror agrees to accept such increase at the same unit prices as provided in the contract for the initial quantities. In the event an award is made to a supplier for the same stock item for delivery to two or more destinations, the increased quantity the Government may order is an amount equal to _____[1] percent of the total quantity of such item awarded the supplier. All or any part of the increased quantity may be directed to any destination shown in the contract for the item, at the price specified for such destination. In the event any part of the increased quantity is directed to a destination not shown in the contract for the item, the provisions of Article 2, GSA Form 1424, shall apply.

(b) The right to exercise this option shall not extend for a period of more than _____[2] days beyond the date of initial award. Delivery of any additional quantities ordered pursuant to this clause shall be made within the same number of days after receipt of notice of increase as provided for delivery of the initial contract quantities.

3. Section 5A–7.170–12 is revised as follows:

§ 5A–7.170–12 Indefinite delivery type contracts.

Except as otherwise provided in § 5A–72.606(b) which applies to contracts containing standby-stock provision, each indefinite delivery type contract for stores stock items (see § 5A–72.105) shall contain one of the following clauses to set forth the scope of the contract.

(a) Definite quantity contracts.

SCOPE OF CONTRACT

During the period from _____ to _____, unless completed at an earlier date, the General Services Administration agrees to purchase and the Contractor agrees to deliver in accordance with the terms of this contract the quantity specified for each item, such delivery to be made from time to time as may be ordered by the Government. If, at the expiration date of the contract, the total quantity has not been ordered, the Government shall issue orders to cover all such unordered balances within thirty (30) days and the contract shall be considered to be extended for this purpose only for an additional thirty (30) days.

(b) Requirements contracts.

SCOPE OF CONTRACT

This contract provides for the normal supply requirements of the General Services Administration supply distribution facilities as identified herein during the period from _____ to _____. The General Services Administration is obligated, except in exigencies or as may be otherwise provided herein, to purchase hereunder such quantities as may be needed from time to time to fill any such supply distribution facilities requirements determined in accordance with the currently applicable procurement and supply procedures. Except as otherwise provided herein, the Contractor is obligated to deliver hereunder all such quantities as may be so ordered from time to time. Unless guaranteed minimum quantities are otherwise stipulated herein, the quantities shown represent the estimated requirements for each item during the contract period, are furnished only for the information of bidders, but shall not be construed to represent any amount which the Government shall be obligated to purchase under the contract nor relieve the Contractor of his obligation to fill all orders which may be placed hereunder.

4. Section 5A–7.170–14 is revised as follows:

§ 5A–7.170–14 Federal Hazardous Substances Labeling Act.

The following clause (included in GSA Form 1424) shall be included in all contracts that provide for packaged items subject to the Federal Hazardous Substances Labeling Act.

FEDERAL HAZARDOUS SUBSTANCES LABELING ACT

Packaged items to be delivered under this contract which are of a hazardous substance and ordinarily are intended or considered to be for use as a household item, are subject to the Federal Hazardous Substances Labeling Act, as amended (15 U.S.C. 1261–1273).

PART 5A–16—PROCUREMENT FORMS

The table of contents of Part 5A–16 is amended by the addition of the following new entry:

Sec.
5A–16.950–2022 GSA Form 2022, Instructions to suppliers.

Section 5A–16.950–2022 is added to read as follows:

§ 5A–16.950–2022 GSA Form 2022, Instructions to Suppliers.

NOTE: The new illustration identified in § 5A–16.950–2022 is filed as part of the original document. Copies may be obtained from the General Services Administration (FPP), Washington, DC 20406.

PART 5A–72—REGULAR PURCHASE PROGRAMS OTHER THAN FEDERAL SUPPLY SCHEDULE

Subpart 5A–72.1—Procurement of Stock Items

1. Section 5A–72.105–3 is amended as follows:

§ 5A–72.105–3 Indefinite delivery type contracts.

* * * * *

(c) * * *

(3) A clause substantially similar to the Guaranteed Minimum Quantity clause (see § 5A–7.170–10) may be used when it is deemed necessary to shorten the delivery time required for initial orders under a new contract by inducing the successful contractor to produce supplies in advance of the receipt of actual purchase orders.

(d) *Definite quantity contracts.* This type of indefinite delivery contract as described in § 1–3.409(a) of this title shall be used when requirements type contracts cannot be awarded at reasonable prices to responsible sources of supply. It should be noted that this type of contract covers a specific quantity, the only indefinite element being the delivery schedule.

* * * * *

2. Section 5A–72.105–5 is revised as follows:

§ 5A–72.105–5 Contract quantities.

(a) *General.* Contracting officers shall determine the quantities to be used in invitations for bid for indefinite delivery type contracts on the basis of past demand and estimated future requirements. Contracting officers contracting for requirements of more than one region shall obtain information for this purpose from the records to be maintained in accordance with § 5A–72.105–27 supplemented by such additional information as is obtained from the regions to be covered by the contract. The Chiefs of regional Procurement Divisions shall notify contracting officers making contracts for their region of any anticipated major increases or decreases of issues of any commodity.

(b) *Requirements contract.* An estimate of the total requirements for the contract period shall be stated in the invitation for bids for the information of prospective contractors. Separate estimates for each item to be awarded separately shall be shown. Under this type of contract a specified minimum quantity of the total requirements which the Government guarantees to purchase during the contract period may be indicated (see § 5A–7.170–10), and maximum and minimum order quantities shall be stated in accordance with §§ 1–3.409(b)(1), 5A–72.105–20, and 5A–72.105–21.

3. Section 5A–72.105–6 is amended as follows:

§ 5A–72.105–6 Delivery conditions and shipping point.

* * * * *

(e) When required as part of the solicitation, a clause substantially as follows shall be inserted (see § 1–2.201 (b)(4) of this title):

PRODUCTION POINT

Offeror shall insert in the spaces below the names of the manufacturers of the items offered and the address of the production facility(ies).

Item No.	*Name of manufacturer*	*Production point (address, including county)*
_____	_____	_____
_____	_____	_____
_____	_____	_____

[1] Indicate amount. Generally, additional quantity should not exceed 25 percent of the basic quantity. However, in unusual circumstances, quantities in excess of 25 percent, not to exceed 50 percent, may be indicated when approved by the appropriate regional Director, FSS, or division director in the Central Office.

[2] Indicate period of days not to exceed a maximum of ninety (90) days.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); 41 CFR 5-1.101(c))

Effective date. These regulations are effective 30 days after the date shown below.

Dated: December 1, 1971.

L. E. SPANGLER,
Acting Commissioner,
Federal Supply Service.

[FR Doc.71-18250 Filed 12-13-71;8:49 am]

Chapter 101—Federal Property Management Regulations

SUBCHAPTER E—SUPPLY AND PROCUREMENT

PART 101-26—PROCUREMENT SOURCES AND PROGRAMS

Subpart 101-26.3—Procurement of GSA Stock Items

CREDIT FOR MATERIAL ORDERED OR SHIPPED IN ERROR

Section 101-26.310 is amended to provide that credit for material returned to GSA will be based on the price billed the agency at the time of shipment by GSA instead of the catalog price in effect at the time material is accepted for credit.

Section 101-26.310 is amended to read as follows:

§ 101-26.310 Ordering and shipping errors.

In accordance with the provisions of this § 101-26.310, GSA may authorize agencies to return for credit material that has been ordered in error by the agency or shipped in error by GSA. Credit will be based on the selling price billed the agency at the time shipment was made to the agency, with the adjustment reflected in current or future billings. Material shall not be returned until appropriate documents authorizing such action are received from the shipping GSA region.

* * * * *

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Effective date. This regulation is effective upon publication in the FEDERAL REGISTER (12-14-71).

Dated: December 6, 1971.

ROBERT L. KUNZIG,
Administrator of General Services.

[FR Doc.71-18256 Filed 12-13-71;8:49 am]

Title 49—TRANSPORTATION

Chapter V—National Highway Traffic Safety Administration, Department of Transportation

[Docket No. 69-7; Notice 15]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Occupant Crash Protection

The purpose of this notice is to respond to petitions requesting reconsideration of the amendments to the seat belt requirements of Standard No. 208, *Occupant Crash Protection*, issued on July 2, 1971 (36 F.R. 12858, July 8, 1971). The petitions are granted in part and denied in part.

The Chrysler Corp. requested an amendment of the belt warning system requirements in S7.3, to provide that the system shall operate only when the vehicle's engine is running. Section S7.3.1 presently requires the warning to operate whenever the ignition is "on", the transmission is in a forward gear, and seat belts are not in use at occupied front outboard seats. Chrysler stated that basing the warning system operation on engine operation would permit simplification of the warning system circuitry. On review, the NHTSA has concluded that the Chrysler position has merit and that requiring warning system operation only when the engine is operating will satisfactorily include the situations in which the vehicle is likely to be in motion, and thereby satisfy the intent of the warning system requirement. S7.3.1(a) is amended accordingly.

It should be noted that a warning system that operates whenever the ignition switch is "on", in accordance with the prior version of S7.3.1(a), will continue to meet the requirement as amended, since such a system will of necessity operate when the engine is running.

Subsequent to the adoption of the passive seatbelt requirement, S4.5.3 (Notice 10, 36 F.R. 12858, July 8, 1971), questions have been raised by Toyota, Renault, and Volkswagen as to the configuration required of passive belts used in place of active belts. The NHTSA's intent in adopting S4.5.3 was to permit manufacturers to substitute a Type 2 passive assembly with a detachable or nondetachable shoulder belt for any active seatbelt specified under an option of S4, even though the S4 option specifies a Type 1 assembly or a Type 2 assembly with a detachable shoulder belt. The agency also intended to permit the substitution of Type 1 passive assemblies where an option does not require a Type 2 assembly. Thus a passive belt used at the front outboard seating positions to meet the third option in the period beginning January 1, 1972 (S4.1.1.3.1(a)) would have to be a Type 2 assembly. Although no formal petitions have been received on these points, it is considered advisable to amend S4.5.3 to clarify its intent.

The formal petition of JAMA with respect to S4.5.3 requested deletion of the requirement that passive seatbelt assemblies must meet the assembly performance and webbing requirements of Standard No. 209. The basis for the request was JAMA's belief that the manufacturer should be allowed as much freedom in the design of a passive belt system to fit the crash characteristics of a particular vehicle as he would have in the design of other types of passive restraints. On reconsideration, the NHTSA has decided that relief from Standard No. 209 should be afforded if a passive belt is capable of meeting the occupant crash protection requirements of S5.1 in a frontal perpendicular impact and amends S4.5.3 accordingly.

The JAMA petition also requested the NHTSA to make it clear that the anchorages of a passive seat belt assembly need not meet the requirements of Standard No. 210. The installation of anchorages is required by Standard No. 210, regardless of the type of restraint system in the vehicle. The NHTSA does not consider that a sufficient need has been shown at this time for amendment of Standard No. 210. Anchorages installed pursuant to that standard are permitted to elongate, so long as they sustain the maximum required force, and such anchorages should therefore be usable in new energy absorbing belt systems.

Ford requested an increase in the minimum warning signal duration from 1 minute to 5 minutes. The NHTSA has considered a variety of alternatives in arriving at the 1-minute level, and remains persuaded that it is a reasonable compromise between the need for warning and the need to avoid undue annoyance in situations where a belt must be temporarily unfastened. The petition is denied.

JAMA requested an amendment to S7.3.3 to provide vehicles with automatic transmissions the option of shutting off the warning signal by use of the parking brake. Although this option is provided for vehicles with manual transmission by S7.3.4 as a concession to cost and lead-time problems of certain manufacturers, there are inconveniences associated with its use on vehicles with automatic transmissions, whose drivers may often prefer to use the "Park" position rather than the parking brake. The petition is therefore denied.

General Motors petitioned for an amendment of S7.3.3 and S7.3.4 to allow warning system activation when the ignition is in the "start" position. The notice issued September 29 proposed amendments to these sections that would require deactivation only when the ignition is in the "on" position. This would permit activation of the system with the ignition in the "start" position, as requested by General Motors. No adverse comment has been received on this proposal, and favorable action will be taken in the rule to be issued pursuant to the notice of September 29.

In another request concerning S7.3.4 (b), JAMA suggested an amendment to permit deactivation of the warning system whenever the parking brake lamp is illuminated. The NHTSA considers such a system to be an acceptable means of conforming to S7.3.4(b) under the present language. Since no further amendment is necessary, the petition for amendment is denied.

In consideration of the foregoing, Motor Vehicle Safety Standard No. 208, Occupant Crash Protection, § 571.208 of Title 49, Code of Federal Regulations is amended as follows:

1. Section 4.5.3 is amended to read as follows:

S4.5.3. *Passive belts.* Except as provided in S4.5.3.1, a seat belt assembly that

requires no action by vehicle occupants (hereinafter referred to as a "passive belt") may be used to meet the crash protection requirements of any option under S4 and in place of any seat belt assembly otherwise required by that option.

S4.5.3.1 A passive belt that provides only pelvic restraint may not be used pursuant to S4.5.3 to meet the requirements of an option that requires a Type 2 seat belt assembly.

S4.5.3.2 A passive belt, furnished pursuant to S4.5.3, that provides both pelvic and upper torso restraint may have either a detachable or nondetachable upper torso portion, notwithstanding provisions of the option under which it is furnished.

S4.5.3.3 A passive belt furnished pursuant to S4.5.3 shall conform to S7.1 of this standard, but need not conform to S7.2, S7.3, and S7.4 of this standard.

S4.5.3.4 A passive belt furnished pursuant to S4.5.3 that is not required to meet the perpendicular frontal crash protection requirements of S5.1 shall conform to the webbing, attachment hardware, and assembly performance requirements of Standard No. 209.

2. Section 7.3.1(a) is amended to read as follows:

(a) The vehicle's engine is operating and the transmission gear selector is in any forward position.

This notice is issued under the authority of sections 103 and 119 of the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1392, 1407, and the delegation of authority by the Secretary of Transportation to the National Highway Traffic Safety Administrator, 49 CFR 1.51.

Issued on December 9, 1971.

CHARLES H. HARTMAN,
Acting Administrator.

[FR Doc.71-18347 Filed 12-13-71;8:50 am]

Chapter X—Interstate Commerce Commission

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Rev. S.O. No. 995; Amdt. 2]

PART 1033—CAR SERVICE

Appointment of Embargo Agents

At a session of the Interstate Commerce Commission, Division 3, held in Washington, D.C., on the 3d day of December 1971.

Upon further consideration of Revised Service Order No. 995 (35 F.R. 7016) and good cause appearing therefor:

It is ordered, That:

Section 1033.995 *Revised Service Order No. 995* (Appointment of embargo agents) be, and it is hereby amended by substituting the following paragraph (f) for paragraph (f) thereof:

(f) *Expiration date.* This order shall expire at 11:59 p.m., December 31, 1972, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., December 31, 1971.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1(10-17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), and 17(2))

It is further ordered, That copies of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Division 3.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-18262 Filed 12-13-71;8:49 am]

[Rev. S.O. No. 994; Amdt. 2]

PART 1034—ROUTING OF TRAFFIC

Rerouting of Traffic; Appointment of Agents

At a session of the Interstate Commerce Commission, Division 3, held in Washington, D.C., on the 3d day of December 1971.

Upon further consideration of Revised Service Order No. 994 (35 F.R. 7017) and good cause appearing therefor:

It is ordered, That:

Section 1034.994 *Revised Service Order No. 994* (Rerouting of traffic—appointment of agents) be, and it is hereby amended by substituting the following paragraph (d) for paragraph (d) thereof:

(d) *Expiration date.* This order shall expire at 11:59 p.m., December 31, 1972, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., December 31, 1971.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1(10-17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), and 17(2))

It is further ordered, That copies of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing in with the Director, Office of the Federal Register.

By the Commission, Division 3.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-18263 Filed 12-13-71;8:50 am]

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

PART 33—SPORT FISHING

Lake Ilo National Wildlife Refuge, N. Dak.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (12-14-71).

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

NORTH DAKOTA

LAKE ILO NATIONAL WILDLIFE REFUGE

Sport fishing on the Lake Ilo National Wildlife Refuge, Dunn Center, N. Dak., is permitted only on the area designated by signs as open to fishing. The area open for winter fishing, comprising 1,050 acres, and the area open for summer fishing, comprising 400 acres, are delineated on maps available at refuge headquarters and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, Federal Building, Fort Snelling, Twin Cities, Minn. 55450. Sport fishing shall be in accordance with all applicable State laws and regulations subject to the following special conditions.

(1) The refuge shall be open to the taking of fish from January 1 to March 21, 1972. The refuge shall then be closed to the taking of fish from March 22 to April 30 and open to fishing from May 1 to September 30, 1972. The refuge shall be closed to fishing from October 1 to December 15 and open to fishing from December 16 to December 31, 1972. Fishing at all times shall be limited to daylight hours only.

(2) One outboard motor of not more than 10 horsepower can be attached to any floating craft and to be used for fishing purposes only.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuges generally which are set forth in Title 50, Part 33, and are effective through December 31, 1972.

JAMES S. FRATER,
Refuge Manager, Lake Ilo National Wildlife Refuge, Dunn Center, N. Dak.

DECEMBER 6, 1971.

[FR Doc.71-18243 Filed 12-13-71;8:48 am]

PART 33—SPORT FISHING

Anahuac National Wildlife Refuge, Tex.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (12–14–71).

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

TEXAS

ANAHUAC NATIONAL WILDLIFE REFUGE

Sport fishing on the Anahuac National Wildlife Refuge, Tex., is permitted only on the areas designated by signs as open to fishing. These open areas, comprising 30 acres of inland water and 7 miles of shoreline, are delineated on maps available at refuge headquarters, Anahuac, Tex., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office Box 1306, Albuquerque, NM 87103. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions.

(1) The open season for inland water sport fishing on the refuge extends from April 1, 1972 through October 1972, inclusive.

(2) Boats and floating devices may not be used for fishing on inland waters.

(3) Trotlines, throw lines or set lines may not be used in inland waters.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1972.

RUSSEL W. CLAPPER,
Refuge Manager, Anahuac National Wildlife Refuge, Anahuac, Tex.

NOVEMBER 30, 1971.

[FR Doc.71–18237 Filed 12–13–71;8:47 am]

PART 33—SPORT FISHING

Erie National Wildlife Refuge, Pa.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (12–14–71).

§ 33.5 Special regulations: sport fishing; for individual wildlife refuge areas.

PENNSYLVANIA

ERIE NATIONAL WILDLIFE REFUGE

Sport fishing on the Erie National Wildlife Refuge, Pa., is permitted on areas designated by signs as open to fishing. Boats are permitted in Lake Creek above Sugar Lake where designated by signs. These open areas are delineated on maps available at refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, U.S. Post Office and Courthouse, Boston, Mass. 02109. Fishing shall be in accordance with all applicable State regulations.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1972.

ROGER N. STEELMAN, Jr.,
Refuge Manager, Erie National Wildlife Refuge, Pa.

NOVEMBER 30, 1971.

[FR Doc.71–18213 Filed 12–13–71;8:45 am]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 81]

INSPECTION OF POULTRY AND POULTRY PRODUCTS

Poultry Slaughtered Under Kosher Exemption

Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that the Consumer and Marketing Service of this Department has been petitioned by the Union of Orthodox Rabbis of the United States and Canada to consider a request to allow poultry slaughterers and processors who properly apply under § 81.203 of the poultry products inspection regulations (7 CFR 81.203) to be exempt from the feather removal requirements for dressed poultry in §§ 81.1 and 81.49 (d) of the said regulations (7 CFR 81.1, 81.49(d)) and from the cooling and chilling requirements of § 81.50 of the said regulations (7 CFR 81.50).

Section 15(a)(3) of the Poultry Products Inspection Act, as amended (21 U.S.C. 464(a)(3)) and § 81.203 of the poultry products inspection regulations (7 CFR 81.203) provide that the Administrator after proper application may exempt any person who slaughters or processes poultry or poultry products, from requirements of the Act and regulations to the extent necessary to avoid conflicts with recognized religious dietary laws and still effectuate the purposes of the Act.

Review of Department policy with respect to such exemptions reveals that so-called "New York Dressed" poultry, that is, poultry which has been slaughtered for human food with head, feet, and viscera intact and from which the blood and feathers have been removed, is produced under kosher exemptions and allowed to move in commerce when so marked. The specific area of slaughter and processing identified in these past applications for kosher exemptions principally involved the scald temperature.

Previously, the Department has not been requested to allow religious dietary exemptions from the feather removal requirements or the chilling and cooling requirements. The Department is seeking further comments, views, or data concerning these two matters.

Any person who wishes to submit written data, views, or arguments concerning the proposed amendments may do so by filing them in duplicate, with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, within 30 days after the date of publication of this notice in the FEDERAL REGISTER.

Persons desiring opportunity for oral presentation of views should address such requests to Dr. M. R. Humphrey, Standards and Services Division, Consumer and Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, within the 30-day period. A transcript will be made of all views orally presented and will be filed in the Office of the Hearing Clerk.

All written submissions and transcripts of oral views made pursuant to this notice will be made available for public inspection unless the person making the submission requests that it be held confidential and a determination is made that a proper showing in support of the request has been made on the grounds that its disclosure could adversely affect such person by disclosing information in the nature of trade secrets or commercial or financial information obtained from any person and privileged or confidential. If it is determined that a proper showing has been made in support of the request, the material will be held confidential; otherwise, notice will be given of denial of such a request and an opportunity afforded for withdrawal of the submission. Requests for confidential treatment will be held confidential (7 CFR 1.27(c)).

Comments on the proposal should bear a reference to the date and page number of this issue of the FEDERAL REGISTER.

Done at Washington, D.C., on December 8, 1971.

KENNETH M. MCENROE,
Deputy Administrator, Meat and Poultry Inspection Program.

[FR Doc.71-18248 Filed 12-13-71;8:48 am]

[7 CFR Part 947]

IRISH POTATOES GROWN IN CERTAIN COUNTIES IN CALIFORNIA AND OREGON

Notice of Proposed Expenses, Rate of Assessment and Late Payment Charges

Consideration is being given to the approval of proposed expenses and a proposed rate of assessment as hereinafter set forth which were recommended by the Oregon-California Potato Committee, established pursuant to Marketing Agreement No. 114, as amended, and Order No. 947, as amended (7 CFR Part 947).

This marketing order program regulates the handling of Irish potatoes grown in Modoc and Siskiyou Counties in California and in all counties in Oregon, except Malheur County, and is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

All persons who desire to submit written data, views, or arguments in connection with these proposals may file the same in quadruplicate with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than the seventh day after publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)). The proposals are as follows:

§ 947.324 **Expenses and rate of assessment.**

(a) The reasonable expenses that are likely to be incurred during the fiscal period beginning July 1, 1971, and ending June 30, 1972, by the Oregon-California Potato Committee for its maintenance and functioning, and for such purposes as the Secretary determines to be appropriate, will amount to $34,565.

(b) The rate of assessment to be paid by each handler in accordance with the Marketing Agreement and this part shall be one-half of one cent ($0.005) per hundredweight of potatoes handled by him as the first handler thereof during said fiscal period: *Provided,* That seed potatoes and potatoes for canning, freezing, and "other processing" as defined in the amendment to the act (Public Law 91-196) shall be exempt.

(c) In accordance with the provisions of § 947.41, late payment charges of $1 per month or 1 percent per month, whichever is greater, shall be charged on the unpaid balance for each past-due account. An account is past-due 60 days after the billing date.

(d) Unexpended income in excess of expenses for the fiscal period ending June 30, 1972, may be carried over as a reserve.

(e) Terms used in this section have the same meaning as when used in said marketing agreement and this part.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: December 9, 1971.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[FR Doc.71-18269 Filed 12-13-71;8:50 am]

[7 CFR Part 967]

CELERY GROWN IN FLORIDA

Notice of Proposed Expenses and Rate of Assessment

Consideration is being given to the approval of proposed expenses and a proposed rate of assessment, as hereinafter set forth, which were unanimously recommended by the Florida Celery Committee.

This committee was established pursuant to Marketing Agreement No. 149 and Marketing Order No. 967, both as amended (7 CFR 967), herein referred to collectively as the "order." The order regulates the handling of celery grown in Florida, and is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

All persons who desire to submit written data, views, or arguments in connection with these proposals may file the same with the Hearing Clerk, Room 112-A, U.S. Department of Agriculture, Washington, D.C. 20250, not later than the seventh day after the publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposals are as follows:

§ 967.207 Expenses and rate of assessment.

(a) The expenses that are reasonable and likely to be incurred during the fiscal year ending July 31, 1972, by the Florida Celery Committee for its maintenance and functioning and for such purposes as the Secretary may determine to be appropriate, will amount to $40,350.00.

(b) The rate of assessment to be paid by each handler in accordance with the marketing agreement and this part shall be one-half of 1 cent ($0.005) per crate of celery handled by him as the first handler thereof during said fiscal year.

(c) As provided in § 967.62, unexpended income in excess of expenses for the fiscal year ending July 31, 1972, may be carried over as an operating reserve.

(d) Terms used in this section have the same meaning as when used in the marketing agreement and this part.

Dated: December 8, 1971.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[FR Doc.71-18247 Filed 12-13-71;8:46 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 71-GL-26]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to designate a transition area at Rochelle, Illinois.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 3166 Des Plaines Avenue, Des Plaines, IL 60018. All communications received within 45 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief.

Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 3166 Des Plaines Avenue, Des Plaines, IL 60018.

A new public use instrument approach procedure has been developed for the Rochelle Airport, Rochelle, Ill. Consequently, it is necessary to provide controlled airspace protection for aircraft executing this new approach procedure by designating a transition area at Rochelle, Ill. The new procedure will become effective concurrently with the designation of the transition area.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (36 F.R. 2140), the following transition area is added:

ROCHELLE, ILL.

That airspace extending upward from 700 feet above the surface within a 5½-mile radius of the Rochelle Municipal Airport (latitude 41°53'35" N., longitude 89°04'45" W.) and within 3 miles either side of the Polo VORTAC 102 radial extending 1 mile west from the 5½-mile radius area excluding the portion that overlies the Rockford, Ill., transition area.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Des Plaines, Ill., on November 19, 1971.

LYLE K. BROWN,
Director, Great Lakes Region.

[FR Doc.71-18240 Filed 12-13-71;8:47 am]

[14 CFR Part 71]

[Airspace Docket No. 71-GL-25]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the transition area at Elkhart, Ind.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief Air Traffic Division, Federal Aviation Administration, 3166 Des Plaines Avenue, Des Plaines, IL 60018. All communication received within 45 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief.

Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 3166 Des Plaines Avenue, Des Plaines, IL 60018.

A new public instrument approach procedure has been developed for the Elkhart Municipal Airport, Elkhart, Ind. Accordingly, it is necessary to alter the Elkhart transition area, by designation of additional controlled airspace, to protect this approach.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (36 F.R. 2140), the following transition area is amended to read:

ELKHART, IND.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Elkhart Municipal Airport (latitude 41°-43'11" N., longitude 85°59'41" W.); and within 2 miles each side of the South Bend, Ind., VORTAC 101° radial, extending eastward from the 5-mile radius area to 23 miles east of the VORTAC, and within 2 miles each side of the Goshen, Ind., VORTAC 008° radial, extending south from the 5-mile radius area to 5 miles north of the Goshen VORTAC excluding the portion which overlies the South Bend, Ind., 700-foot floor transition area.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655 (c)).

Issued in Des Plaines, Ill., on November 19, 1971.

LYLE K. BROWN,
Director, Great Lakes Region.

[FR Doc.71-18241 Filed 12-13-71;8:48 am]

[14 CFR Part 71]

[Airspace Docket No. 71-GL-23]

CONTROLLED AIRSPACE

Proposed Designation

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to designate controlled airspace at Lone Rock, Wis.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 3166 Des Plaines Avenue, Des Plaines, IL 60018. All communications received within 45 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief.

Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration 3166 Des Plaines Avenue, Des Plaines, IL 60018.

Flights northwest of Madison, Wis., to and from the airport are radar vectored to give the best operational handling. These flights are required to stay in controlled airspace while being radar vectored. Inbound flights either have to be held above 14,500 feet to remain in controlled airspace or be vectored around the uncontrolled airspace area between V82 and V2 northwest of Lone Rock. This causes a very rapid descent or restricted flight to join the arrival sequence causing an undesirable workload on both pilot and controller. Designation of controlled airspace with a base of 5,000 MSL in this area would alleviate this problem.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

§ 71.181 (36 F.R. 2140), the following transition area is amended to read:

LONE ROCK, WIS.

That airspace extending upward from 1,200 feet above the surface within 10 miles south and 7 miles north of the Lone Rock VORTAC 089° and 269° radials, extending from 9 miles east to 20 miles west of the VORTAC; that airspace extending upward from 5,000 feet MSL in the area bounded on the north by V170, on the south by V2, and on the east by longitude 89°55'00" W.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Des Plaines, Ill., on November 22, 1971.

LYLE K. BROWN,
Director, Great Lakes Region.

[FR Doc.71-18242 Filed 12-13-71;8:48 am]

Notices

DEPARTMENT OF THE TREASURY

Internal Revenue Service

NOTICE OF GRANTING OF RELIEF

Notice is hereby given that pursuant to 18 U.S.C. 925(c) the following named persons have been granted relief from disabilities imposed by Federal laws with respect to the acquisition, transfer, receipt, shipment, or possession of firearms incurred by reason of their convictions of crimes punishable by imprisonment for a term exceeding 1 year.

It has been established to my satisfaction that the circumstances regarding the convictions and each applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief will not be contrary to the public safety.

Balbini, Ossie Joseph, Jr., 4497 Oasis Road, Redding, CA, convicted on October 20, 1960, by the Superior Court of El Dorado County, Placerville, Calif.

Brinton, William E., Box 891, Bristol, CT, convicted on December 11, 1959, and on February 1, 1962, by the 17th Circuit Court for Bristol, Conn.

Callaghan, Joseph N., 295 Longwood Avenue, Boston, MA, convicted on June 11, 1959, by the Chelsea District Court, Mass.

Gresens, Kenneth M., Three Lakes, Wis., convicted on January 10, 1967, in the Outagamie County Court, Appleton, Wis.

Hoeft, Ronald J., 37726 Genesee Lake Road, Oconomowoc, Wis., convicted on August 24, 1962, by the Waukesha County Court, Branch II, Waukesha County, Wis.

Kassner, Harold J., Box 242, Circle, MT, convicted on December 18, 1946, in the District Court of the Seventh Judicial District in and for McCone County, Mont.

Manetta, Ollie, 9903 Woodside, Detroit, MI, convicted on April 7, 1942, of two crimes, by the Allegheny County Court, Pittsburgh, Pa.

Montgomery, Hughe M., Route 1, Box 209, Payette, ID, convicted on November 28, 1951, by the District Court of the 11th Judicial District of the State of Idaho.

Rushing, Jerry E., Route No. 2, Monroe, NC, convicted on October 14, 1963, by the U.S. District Court, in and for the Western District of North Carolina, Charlotte Division, N.C.

Simms, Artie Edward, 131 South Dixie Highway, St. Augustine, FL, convicted on June 14, 1968, by the U.S. District Court, in and for the Middle District of Florida, Jacksonville, Fla.

Stevens, Robert Eugene, 6587 Jones Avenue, Box 112, Brady Lake, OH, convicted on February 8, 1966, by the U.S. District Court, in and for the Southern District of West Virginia; and on May 13, 1966, by the Circuit Court of Fayette County, W. Va.

Terrian, Raymond L., 1530 Ribble Road, Saginaw, MI, convicted on March 4, 1957, in the Circuit Court for the County of Saginaw, at Saginaw, Mich.

Vanderslice, Bobbie Gene, Route 1, Pattonsburg, MO, convicted on March 31, 1951, in the Circuit Court of Daviess County, Mo.

Walstra, Samuel R., Rural Route 1, Waupun, WI, convicted on February 29, 1968, in the Fond du Lac County Court, Fond du Lac, Wis.

Wilson, Michael R., 6521 North Clay Street, No. 19, Denver, CO, convicted on September 19, 1968, in the Black Hawk County District Court, Iowa.

Xander, Earl P., 105 Marbeth Avenue, Carlisle, PA, convicted on April 9, 1959, in the U.S. District Court, Scranton, Pa.

Zaragoza, Alexander J., 1007 East Haley Street, Santa Barbara, CA, convicted on August 26, 1954, in the Municipal Court, Santa Barbara Judicial District, County of Santa Barbara, Calif.

Signed at Washington, D.C., this 6th day of December 1971.

[SEAL] REX D. DAVIS,
Director, Alcohol, Tobacco and Firearms Division.

[FR Doc.71-18244 Filed 12-13-71;8:48 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Serial No. Idaho 4379]

IDAHO

Order Providing for Opening of Public Lands

DECEMBER 7, 1971.

1. In an exchange of lands made under the provisions of section 8 of the Act of June 28, 1934 (48 Stat. 1269), as amended (43 U.S.C. 315g), the following described lands have been reconveyed to the United States:

BOISE MERIDIAN, IDAHO

PARCEL 1

T. 9 N., R. 19 E.,
Sec. 16, NW¼SW¼;
Sec. 17, N½SE¼.

PARCEL 2

T. 10 N., R. 24 E.,
Sec. 2, lot 3, lot 4;
Sec. 3, lot 1, lot 2.

PARCEL 3

T. 11 N., R. 24 E.,
Sec. 27, SE¼SE¼;
Sec. 33, E½SE¼;
Sec. 34, E½NE¼, SW¼NE¼, W½SW¼, SE¼SW¼, SE¼.

PARCEL 4

T. 12 N., R. 24 E.,
Sec. 5, SW¼NE¼.

The areas described aggregate 784.08 acres in Custer County.

2. Parcel 1 is located approximately 27 air miles south of Challis, Idaho. Access is via U.S. Highway 93 for 19 miles southwest from Challis, thence 8 miles on the East Fork county highway to the mouth of Herd Creek, thence 5 miles on Herd Creek road. Lake Creek flows through the central portion of the lands. Soils are clay loam. Topography is about 15.5 acres subirrigated native meadow bottom land and 104.5 acres rolling hillsides. Vegetation is sedges, rushes, perennial wetland grasses, and sagebrush with dryland grasses. Elevation is 7,000 feet above sea level.

3. Parcels 2 and 3 adjoin, have similar soils, topography, vegetative cover and watering facilities. They are located approximately 36 air miles east of Challis, Idaho. Access is by 18 miles down the Salmon River from Challis to the Pahsimeroi Highway, thence approximately 40 miles over the highway and a county road. Elkhorn Creek flows through the eastern portion; and a small unnamed creek flows through the western portion. The creeks have formed a series of ridges and dry draws with rough, undulating topography. Elevation is from 7,500 to 8,200 feet above sea level. Vegetation is willows, sagebrush, and native grasses.

4. Parcel 4 is located approximately 40 miles southeast of Challis, Idaho. Access is by traveling 18 miles down the Salmon River to the Pahsimeroi paved highway, thence 35 miles; or 9 miles southeast of Patterson, Idaho. Topography is flat to rolling. Vegetation is big sagebrush with an understory of Blue bunch wheatgrass, Sandburgs bluegrass, and annuals. Soils are silt loam.

5. Since the described lands are classified for multiple-use management under the Act of September 19, 1964 (43 U.S.C. 1411–18) and the regulations in 43 CFR 2420 and 2461, the lands will not be subject to disposition under the agricultural land laws (43 U.S.C. Parts 7 and 9; 24 U.S.C. sec. 334) and from sales under section 2455 of the Revised Statutes (43 U.S.C. 1711).

6. The mineral rights in the lands were not exchanged as to Parcels 2 and 3. Therefore, the mineral status of these lands is not affected by this order.

7. Subject to valid existing rights, the provisions of existing withdrawals, the provisions of the Multiple-Use Classification of December 11, 1970, and the requirements of applicable law, the lands are hereby opened to application, petition, location, and selection, including location under the U.S. mining laws as to those lands in Parcels 1 and 4. All valid applications received at or prior to 10 a.m. on January 11, 1972, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

8. Inquiries concerning the lands should be addressed to the Chief, Division of Technical Services, Idaho State Office, Bureau of Land Management, 550 West Fort Street, Boise, ID 83702.

RICHARD H. PETRIE,
Chief, Division of Technical Services.

[FR Doc. 71-18221 Filed 12-13-71;8:46 am]

[Serial No. Idaho 4380]

IDAHO

Order Providing for Opening of Public Lands

DECEMBER 7, 1971.

1. In an exchange of lands made under the provisions of section 8 of the Act of June 28, 1934 (48 Stat. 1269), as amended (43 U.S.C. 315g), the following described lands have been reconveyed to the United States:

BOISE MERIDIAN, IDAHO

T. 4 S., R. 17 E.

Sec. 26: NE¼SE¼, except a strip of land as conveyed to the State of Idaho for highway purposes in deed of 6–16–30 recorded on 7–9–30 in Block 34 Deeds, page 556 and in deed of 6–24–54 recorded on July 16, 1954, in Book 45 Deeds, page 319, records of Lincoln County.

Sec. 35: SE¼NE¼, except a strip of land 50 feet wide conveyed to the State of Idaho for highway purposes in deed of May 31, 1930, recorded July 9, 1930, in Book 34 Deeds, page 551, records of Lincoln County.

The areas described aggregate 77.78 acres, more or less.

2. The lands are located in Lincoln County approximately 7 miles north of Shoshone, Idaho. Topography is a gentle undulating relief with lava outcrops. Vegetation is big sagebrush and cheatgrass with scattered patches of mustard and other weeds. Soils are a silt loam of variable depth. An 8-inch natural gas pipeline owned by Intermountain Gas Co. traverses the tracts.

3. Since the described lands are classified for multiple-use management under the Act of September 19, 1964 (43 U.S.C. 1411–18), and the regulations in 43 CFR 2420 and 2461, the lands will not be subject to disposition under the agricultural land laws (43 U.S.C., Parts 7 and 9; 24 U.S.C. sec. 334) and from sales under section 2455 of the Revised Statutes (43 U.S.C. 1171).

4. Subject to valid existing rights, the provisions of existing withdrawals, the provisions of the Multiple-Use Classification of November 26, 1970, and the requirements of applicable law, the lands are hereby opened to application, petition, location and selection, including location under the U.S. mining laws. All valid applications received at or prior to 10 a.m. on January 11, 1972, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

5. Inquiries concerning the lands should be addressed to the Chief, Division of Technical Services, Idaho State Office, Bureau of Land Management, 550 West Fort Street, Boise, ID 83702.

RICHARD H. PETRIE,
Chief,
Division of Technical Services.

[FR Doc.71–18222 Filed 12–13–71;8:46 am]

[Wyoming 32043]

WYOMING

Notice of Proposed Classification of Lands; Amendment

DECEMBER 6, 1971.

In F.R. Doc. 71–17042, appearing on page 22243 of the Issue for November 23, 1971, the following change should be made:

The land description for T. 21 N., R. 91 W., should include the following additional land: Sec. 26, all;

NYLES HUMPHREY,
Acting State Director.

[FR Doc.71–18238 Filed 12–13–71;8:47 am]

National Park Service

ROCKY MOUNTAIN NATIONAL PARK AND SHADOW MOUNTAIN NATIONAL RECREATION AREA

Notice of Intention To Issue Concession Permits

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20) public notice is hereby given that thirty (30) days after the date of publication of this notice, the Department of the Interior, through the Superintendent, Rocky Mountain Group, proposes to issue the following concession permits to: Bill Faltermeier doing business as The Denver Post in Rocky Mountain National Park and Shadow Mountain National Recreation Area; and R. Frank Norton doing business as Norton's Marina in Shadow Mountain National Recreation Area, authorizing them to provide concession facilities and services for the public at Rocky Mountain National Park and Shadow Mountain National Recreation Area for the period of five (5) years, from January 1, 1972, through December 31, 1976.

The foregoing concessioners have performed their obligations under a prior permit to the satisfaction of the National Park Service and therefore, pursuant to the Act cited above, are entitled to be given preference in the renewal of permits and in the negotiations of new permits. However, under the Act cited above, the National Park Service is also required to consider and evaluate all proposals received as a result of this notice. Any proposal to be considered and evaluated must be submitted within thirty (30) days after the publication date of this notice.

Interested parties should contact the Superintendent, Rocky Mountain Group, National Park Service, Estes Park, Colo. 80517 for information as to the requirements of the proposed permits.

J. L. DUNNING,
Superintendent, Rocky Mountain Group, National Park Service.

NOVEMBER 19, 1971.

[FR Doc.71–18223 Filed 12–13–71;8:46 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. FDC–D–37e; NADA No. 5–119V]

HAVER-LOCKHART LABORATORIES

Drug Product Containing Sulfathiazole; Notice of Withdrawal of Approval of a New Animal Drug Application

A notice of opportunity for a hearing was published in the FEDERAL REGISTER of October 2, 1971 (36 F.R. 19326), proposing to withdraw approval of NADA (new animal drug application) No. 5–119V, Sulfathiazole With Vitamins A and D Cream; manufactured by Haver-Lockhart Laboratories, Post Office Box 676, Kansas City, MO 64141.

Haver-Lockhart Laboratories did not file a witten appearance of election regarding whether or not they wished to avail themselves of the opportunity for a hearing within the 30-day period provided for such filing in said notice. This is construed as an election by said firm not to avail themselves of the opportunity for a hearing.

Based on the grounds set forth in the notice and the response to said notice, the Commissioner of Food and Drugs concludes that approval of said NADA should be withdrawn. Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343–351; 21 U.S.C. 360b) and under authority delegated to the Commissioner (21 CFR 2.120), approval of NADA No. 5–119V, including all amendments and supplements thereto, is withdrawn effective on the date of publication of this document.

Dated: December 1, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.71–18224 Filed 12–13–71;8:46 am]

PRINCE MACARONI MANUFACTURING CO.

Enriched Macaroni Product Deviating From Identity Standard; Temporary Permit for Market Testing

Pursuant to § 10.5 (21 CFR 10.5) concerning temporary permits for market testing foods deviating from the requirements of standards of identity promulgated pursuant to section 401 (21 U.S.C. 341) of the Federal Food, Drug, and Cosmetic Act, notice is given that a temporary permit has been issued to Prince Macaroni Manufacturing Co., Lowell, Mass. 01853. This permit covers limited interstate marketing tests of a wheat and soy macaroni product that deviates from the identity standard prescribed in § 16.4 (21 CFR 16.4).

The product will contain 8 percent soy flour and added wheat gluten, wheat germ, egg white solids, and L-lysine.

Other nutrients will be added as specified in § 16.9(a)(1). The product will be labeled "enriched macaroni made from wheat and 8 percent soya." The labels of the product will declare by common name the ingredients used as well as the percentage of the minimum daily requirements for the vitamins and iron supplied by the product when consumed in a specific quantity.

This permit expires 18 months from the date of signature of this document.

Dated: December 3, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.71-18228 Filed 12-13-71;8:46 am]

[Docket No. FDC-D-402; NADA Nos. 37-146V and 37-147V]

SYNTEX LABORATORIES AND ELANCO PRODUCTS CO.

Chlormadinone Acetate; Notice of Opportunity for Hearing

Notice is hereby given to Syntex Laboratories, Animal Health Division, Stanford Industrial Park, Palo Alto, Calif. 94304, and Elanco Products Co., Division of Eli Lilly and Co., Indianapolis, Ind. 46206, and to any interested persons who may be adversely affected that the Commissioner of Food and Drugs proposes to issue an order under the provisions of section 512(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(e)) withdrawing approval of NADA (new animal drug application) Nos. 37-146V and 37-147V regarding chlormadinone acetate when administered in feed to beef heifers and beef cows for synchronization of estrus (heat).

The Commissioner, on the basis of new information before him with respect to such drug evaluated together with the evidence available to him when the applications were approved, concludes that the drug is not shown to be safe under the conditions of use upon the basis of which the applications were approved.

Information available to the Commissioner has established that the oral administration of the drug has resulted in the development of mammary tumors in dogs. The drug is, therefore, not considered to be safe for use in the absence of appropriately sensitive methods of analysis to establish its absence in food derived from treated animals.

In accordance with the provisions of section 512 of the act (21 U.S.C. 360b), the Commissioner will give the applicants and any interested persons who would be adversely affected by an order withdrawing such approval an opportunity for a hearing at which time such persons may produce evidence and arguments to show why approval of NADA Nos. 37-146V and 37-147V should not be withdrawn and corresponding regulations providing for its use be revoked in accordance with section 512(d) of the act. Promulgation of the proposed order will cause any such drug containing chlormadinone acetate to be a new animal drug for which no approved new animal drug application is in effect. Any such drug or any animal feed bearing or containing such drug then on the market would be subject to regulatory proceedings.

Within 30 days after publication hereof in the FEDERAL REGISTER, such persons are required to file with the Hearing Clerk, Department of Health, Education, and Welfare, Office of the General Counsel, Room 6-88, 5600 Fishers Lane, Rockville, Md. 20852, a written appearance electing whether:

1. To avail themselves of the opportunity for a hearing; or
2. Not to avail themselves of the opportunity for a hearing.

If such persons elect not to avail themselves of the opportunity for a hearing, the Commissioner, without further notice, will enter a final order withdrawing approval of the new animal drug applications.

Failure of such persons to file a written appearance of election within 30 days will be construed as an election by such persons not to avail themselves of the opportunity for a hearing.

The hearing contemplated by this notice will be open to the public except that any portion of the hearing concerning a method or process that the Commissioner finds is entitled to protection as a trade secret will not be open to the public, unless the respondent specifies otherwise in his appearance.

If such persons elect to avail themselves of the opportunity for a hearing, they must file a written appearance requesting the hearing and giving the reasons why the approval of the new animal drug applications should not be withdrawn together with a well organized and full factual analysis of the clinical and other investigational data they are prepared to prove in support of their opposition to the grounds for the notice of opportunity for a hearing. A request for a hearing may not rest upon mere allegations or denials but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. When it clearly appears from the data in the applications and from the reasons and factual analysis in the request for the hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of these applications, the Commissioner will enter an order stating his findings and conclusions on such data. If the hearing is requested and is justified by the response to this notice, the issues will be defined, a hearing examiner will be named, and he shall issue a written notice of the time and place at which the hearing will commence.

Responses to this notice will be available for public inspection in the Office of the Hearing Clerk (address given above) during regular business hours, Monday through Friday.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343-51; 21 U.S.C. 360b) and under authority delegated to the Commissioner (21 CFR 2.120).

Dated: December 3, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.71-18225 Filed 12-13-71;8:46 am]

[Docket No. FDC-D-376; NADA No. 8-880V]

WEIDNERIT AND DR. EDMUND WEIDNER

Otrhomin Weidner; Notice of Withdrawal of Approval of New Animal Drug Application

A notice of opportunity for a hearing was published in the FEDERAL REGISTER of September 29, 1971 (36 F.R. 19131), proposing to withdraw approval of new animal drug application No. 8-880V, (1) Otrhomin Weidner Solution Injectable, (2) Otrhomin Weidner Tablets, and (3) Otrhomin Weidner Powder, manufactured by Weidnerit, Dr. Edmund Weidner, 1 Berlin 31, Federal Republic of Germany, and imported by Dr. Stephen Jackson, 4815 Rugby Avenue, Washington, D.C. 20014.

Dr. Stephen Jackson filed a letter requesting a hearing, but did not file adequate data to support such a request. The Commissioner of Food and Drugs concludes that there is no genuine and substantial issue of fact to justify a hearing (35 F.R. 7250). Therefore, the request for a hearing is denied.

Based on the grounds set forth in the notice of opportunity for hearing, the Commissioner concludes that approval of said new animal drug application should be withdrawn. Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343-51; 21 U.S.C. 360b) and under authority delegated to the Commissioner (21 CFR 2.120), approval of new animal drug application No. 8-880V, including all amendments and supplements thereto, is withdrawn effective on the date of publication of this document.

Dated: December 1, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.71-18226 Filed 12-13-71;8:46 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D-71-135]

ACTING AREA DIRECTOR, INDIANAPOLIS AREA OFFICE

Designation

The listed officials are designated to serve as Acting Area Director, Indianapolis Area Office, in the order named, during the vacancy in that office, with all

the powers, functions, and duties redelegated or assigned to the Area Directors: *Provided,* That no official here listed is authorized to serve as Acting Area Director unless and until all the officials listed before him in this designation are unavailable to act by reason of absence or vacancy in the position of Area Director, Indianapolis:

1. Lawrence Haddad, Special Assistant to the Regional Administrator, Region V (Chicago).
2. Louciene Watson, Acting Deputy Director.
3. Stephen J. Havens, Director, Operations Division.
4. Theodore E. Bruzas, Deputy Director, Operations Division.

(The authority for this designation is set forth in 36 F.R. 3389, Feb. 23, 1971, sec. B.2; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Effective date. This designation shall be effective as of November 8, 1971.

GEORGE J. VAVOULIS,
Regional Administrator, Region V.

[FR Doc.71-18257 Filed 12-13-71;8:49 am]

ATOMIC ENERGY COMMISSION

COMMONWEALTH OF PENNSYLVANIA AND NUCLEAR MATERIAL AND EQUIPMENT CORP.

License Termination Order

The Atomic Energy Commission (the Commission) has determined that the dismantlement and decontamination of the pool reactor possessed by the Commonwealth of Pennsylvania and the Nuclear Materials and Equipment Corp. (NUMEC) at Quehanna, Pa., under Facility License No. R-72 and the disposition of its component parts and special nuclear material have been conducted in a manner not inimical to the common defense and security or to the health and safety of the public in accordance with the Commission's regulations in 10 CFR Chapter I. As a result of the dismantlement of this reactor and the disposition of certain of its component parts and the special nuclear material, a reactor license for this facility is no longer required. Responsibility for the sealed cobalt 60 sources located in the pool, which are to be used for irradiation purposes, as well as any contamination remaining in the duct work of the hot cell, in the liquid waste system, and on fixed surfaces in restricted areas has been assumed by Atlantic Richfield Co. under the terms of its existing Byproduct Material License No. 37-12307-02. In view of the above, and on the basis of information submitted by NUMEC and the inspection of the facility performed by the Commission's representative, we determine that Facility License No. R-72 may be terminated without endangering the common defense and security and the public health and safety. Accordingly, Facility License No. R-72 is hereby terminated as of the date of this order.

Also, Indemnity Agreement No. B-33 between the Commonwealth of Pennsylvania, NUMEC, and the Atomic Energy Commission dated November 9, 1967, as amended, is hereby terminated as of the date of this order, and concurrently Amendment No. 3 to this agreement is being executed.

Dated at Bethesda, Md., this 2d day of December 1971.

For the Atomic Energy Commission.

PETER A. MORRIS,
Director,
Division of Reactor Licensing.

[FR Doc.71-18214 Filed 12-13-71;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 23970]

DOMINICANA DE AVIACION, C. POR A.

Notice of Hearing

Notice is hereby given pursuant to the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding is assigned to be held on December 17, 1971, at 10 a.m., local time, in Room 1027, Universal Building, Connecticut and Florida Avenues NW., Washington, DC, before the undersigned examiner.

Dated at Washington, D.C., December 8, 1971.

[SEAL] JOSEPH L. FITZMAURICE,
Hearing Examiner.

[FR Doc.71-18264 Filed 12-13-71;8:50 am]

ENVIRONMENTAL PROTECTION AGENCY

NACA INDUSTRY TASK FORCE

Notice of Amended Filing of Petition Regarding Pesticide Chemical

Notice was given in the FEDERAL REGISTER of January 18, 1968 (33 F.R. 651), that a petition (PP 8F0670) had been filed by the National Agricultural Chemicals Association's Industry Task Force on Phenoxy Herbicide Tolerances, 1155 15th Street NW., Washington, D.C. 20005, proposing establishment of tolerances for residues of the herbicide 2,4-D (2,4-dichlorophenoxyacetic acid) in or on the raw agricultural commodities alfalfa, blueberries, clover, corn (field, sweet, and popcorn), cranberries, grapes, potatoes, raspberries, sorghum (milo and milo maize), soybean hay, soybeans, strawberries, sugarcane, and trefoil at 0.2 part per million; and flax seed and rice at 0.5 part per million from application of 2,4-D in the acid form or in the form of one or more of the following salts or esters:

1. The inorganic salts: Ammonium, lithium, potassium, and sodium.

2. The amine salts: Alkanolamines (of the ethanol and isopropanol series), alkyl (C-12), alkyl (C-13), alkyl (C-14), alkylamines derived from tall oil, amylamine diethanolamine, diethylamine, diisopropanolamine, dimethylamine, *N,N*-dimethyllinoleylamine, *N,N*-dimethyloleylamine, ethanolamine, ethylamine, heptylamine, isopropanolamine, isopropylamine, linoleylamine, methylamine, morpholine, *N*-oleyl-1,3-propylenediamine, octylamine, oleylamine, propylamine, triethanolamine, triethylamine, triisopropanolamine, and trimethylamine.

3. The esters: Amyl (pentyl), butoxyethoxypropyl, butoxyethyl, butoxypolyethoxypropyl, butoxypropyl butyl, dipropylene glycol isobutyl ether, ethoxyethoxyethyl, ethoxythoxypropyl, ethyl, ethylene glycol butyl ether, 2-ethylhexyl (isooctyl), 2-ethyl-4-methylpentyl (isooctyl), isobutyl, isooctyl, isopropyl, methyl, 2-octyl (isooctyl), polyethylene glycol 200, polypropoxybutyl, polypropylene glycol, propylene glycol, propylene glycol butyl ether, propylene glycol isobutyl ether, tetrahydrofurfuryl, and tripropylene glycol isobutyl ether.

Pursuant to provisions of the Federal Food. Drug, and Cosmetic Act (sec. 408(d)(1), 409(b)(5), 68 Stat. 512; 72 Stat. 1786; 21 U.S.C. 346a(d)(1), 348(b)(5)), notice is given that said petition has been amended by:

a. Withdrawing the request for tolerances on flax, potatoes, raspberries, soybean hay, soybeans, and strawberries.

b. Adding the commodities grass at 300 parts per million; corn fodder and forage and sorghum fodder and forage at 20 parts per million; kidney of cattle, goats, and sheep at 1 part per million; fresh corn including sweet corn (kernels plus cob with husk removed) at 0.5 part per million; rice straw and meat and meat byproducts other than kidney of cattle, goats, and sheep at 0.1 part per million (negligible residue); and milk at 0.05 part per million (negligible residue).

c. Increasing the proposed 0.2 part per million tolerance on alfalfa, blueberries, clover, and trefoil to 1 part per million and on corn grain, cranberries, and grapes to 0.5 part per million.

d. Reducing the proposed 0.5 part per million tolerance on rice to 0.1 part per million and the 0.2 part per milliion tolerance on sorghum (milo and milo maize) and sugarcane to 0.1 part per million.

Notice is also given that the same association has filed a related food additive petition (FAP 2H5000) proposing establishment of a food additive tolerance (21 CFR Part 121) of 0.5 part per million for residues of the herbicide in sugarcane bagasse resulting from application of the herbicide to sugarcane fields.

Dated: December 6, 1971.

WILLIAM M. UPHOLT,
Deputy Asistant Administrator for Pesticides Programs.

[FR Doc.71-18215 Filed 12-13-71;8:45 am]

FEDERAL MARITIME COMMISSION

EAST ASIATIC CO., LTD., ET AL.

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1015; or may inspect the agreement at the field offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularty. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

The East Asiatic Co., Ltd., the Blue Star Line, Ltd., Rederiaktiebolaget Nordstjernan.

Notice of Agreement Filed by:

John R. Mahoney, Esq., Casey, Lane and Mittendorf, 26 Broadway, New York, NY 10004.

Agreement No. 9973, among the abovenamed carriers, provides for a cooperative working arrangement in the trade between the Pacific Coast of the United States (including Hawaii and Alaska) and the United Kingdom, Eire and the European Continent (including Scandinavia and Finland but excluding ports on the Mediterranean). The Agreement provides for rationalization of services and pooling of revenues under terms and conditions set forth in the Agreement.

Dated: December 9, 1971.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-18271 Filed 12-13-71;8:50 am]

JAPAN LINE, LTD., ET AL.

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1015; or may inspect the agreement at the field offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of Agreement Filed by:

Charles F. Warren, Esq., 1100 Connecticut Avenue, Washington, DC 20036.

Agreement No. 9975 is a containership service agreement between Japan Line, Ltd., Kawasaki Kisen Kaisha, Ltd., Yamashita-Shinnihon Steamship Co., Ltd., Mitsui O.S.K. Lines, Ltd., and Nippon Yusen Kaisha, which has been filed with the Commission for approval under section 15 of the Shipping Act, 1916 wherein the parties agree to inaugurate a containership service "* * * with container vessels on orders * * *" in the trade between Japan and ports on the U.S. Atlantic Coast of North America. The accompanying letters of transmittal indicates the parties intend to serve on a coordinated weekly basis (with forty-nine (49) day turn-around) the Japanese ports of Kobe and Tokyo and the port of New York. In order to accomplish this objective, the Agreement states that the parties have (1) agreed to schedule and advertise the sailings to promote optimum vessel utilization; (2) restricted application of the agreement to cargo placed in containers for shipment on the parties' container vessels, but the agreement does not preclude the parties from carrying on their own container vessels other available cargo; (3) agreed to solicit and book such containerized cargoes for their own separate accounts; (4) agreed to issue their own separate bills of lading; (5) provided for space chartering arrangements for the carriage of loaded and empty containers on each others' vessels; (6) prohibited pooling of revenues or sharing of operational expenses but certain administrative expenses may be shared; (7) reached an understanding for the interchange of empty containers and/or related equipment; (8) prohibited application of the agreement upon any matter relating to existing service at the involved ports; (9) provided for possible transshipment arrangements with other water carriers to accumulate or deliver containers in the trades; and (10) limited the duration of the agreement to 5 years from the date the first container vessel enters the trade.

Dated: December 9, 1971.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-18270 Filed 12-13-71;8:50 am]

FEDERAL POWER COMMISSION

[Docket No. RP72-70]

ALGONQUIN GAS TRANSMISSION CO.

Notice of Proposed Changes in Rates and Charges

DECEMBER 6, 1971.

Take notice that on November 15, 1971, Algonquin Gas Transmission Co. filed in Docket No. RP72-70 proposed changes in its FPC Gas Tariff, Original Volumes Nos. 1 and 2 to become effective on December 17, 1971. The company's letter of transmittal appears below.[1]

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 441 G Street NW., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 15, 1971. Protests will be considered by the Commission in determining the appropriate action to be taken, but it will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. The Company's application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 71-18229 Filed 12-13-71;8:46 am]

[Docket No. CP72-9]

ARKANSAS LOUISIANA GAS CO.

Notice of Petition To Amend

DECEMBER 6, 1971.

Take notice that on November 22, 1971, Arkansas Louisiana Gas Co. (petitioner), Post Office Box 1734, Shreveport, LA 71102, filed in Docket No. CP 72-9 a petition to amend the order of

[1] Filed as part of the original document.

the Commission heretofore issued pursuant to section 7(c) of the Natural Gas Act on November 1, 1971 (46 FPC ——), by authorizing the delivery of natural gas purchased from Mesa Petroleum's Risely Well, Hemphill County, Tex., for exchange with Cities Service Gas Co. (Cities Service), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

The order of November 1, 1971, authorized, inter alia, the construction and operation of facilities and the exchange of natural gas between Cities Service and petitioner to enable petitioner to receive volumes of natural gas purchased from the Red Deer Area of Hemphill and Roberts Counties, Tex. Petitioner proposes herein to include, in the volume of natural gas to be delivered to Cities Service from Hemphill County, gas purchased from Mesa Petroleum's Risely Well.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before December 27, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10), all protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.71-18230 Filed 12-13-71;8:46 am]

[Docket No. CP72-143]

FLORIDA GAS TRANSMISSION CO.

Notice of Application

DECEMBER 6, 1971.

Take notice that on November 26, 1971, Florida Gas Transmission Co. (applicant), Post Office Box 44, Winter Park, FL 32789, filed in Docket No. CP72-143 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing applicant to deliver to Dow Chemical Co. (Dow) at the tailgate of the gas processing plant of Tenneco Oil Co. (Tenneco), Palacios Field, Matagorda County, Tex., certain quantities of natural gas which are equivalent to a portion of the quantities which applicant presently receives into its system from the Bayou Bleu Field, Iberville Parish, La., under a gas purchase contract with Dow dated February 21, 1971, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The application indicates that the subject proposal will enable Dow to receive its share of gas from a newly completed gas well in Iberville Parish. Applicant states that it will receive delivery as tendered by Dow at the existing point of connection with applicant's system in Iberville Parish of a maximum quantity of 1,500 MM B.t.u. of natural gas per day, in addition to the quantities purchased and received daily by applicant at that point, and simultaneously redeliver to Dow at the Tenneco plant at Matagorda County an equivalent quantity of natural gas.

The application further indicates that applicant and Dow have entered into a gas transportation contract under the terms of which Dow will pay applicant 1 cent per MM B.t.u. for gas received and redelivered by applicant.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 28, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.71-18231 Filed 12-13-71;8:47 am]

[Docket No. CP61-102]

MICHIGAN WISCONSIN PIPE LINE CO.

Notice of Petition To Amend

DECEMBER 6, 1971.

Take notice that on October 26, 1971, Michigan Wisconsin Pipe Line Co. (petitioner) 1 Woodward Avenue, Detroit, MI 48226, filed in Docket No. CP61-102 a petition to amend the order accompanying Opinion No. 353 (27 FPC 449) issuing a certificate of public convenience and necessity in said docket pursuant to section 7(c) of the Natural Gas Act by authorizing petitioner to operate certain facilities at increased pressures, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

The order issuing a certificate in the subject docket authorizes petitioner to construct and operate a natural gas supply line extending from the Woodward Area of Oklahoma to petitioner's Southwest main line transmission system at its Greensburg Compressor Station. The southerly 25.6 miles of this line is 16 inches in diameter and extends from petitioner's Mooreland Compressor Station to its Lovedale gas supply line. The northerly portion of this line is 20 inches in diameter and extends from the Lovedale gas supply line to the Greensburg Compressor Station.

Petitioner states that at the time the 16-inch line was constructed, it was estimated that its capacity would be adequate to transport the reserves available and anticipated to become available to petitioner in the Woodward Area when operating at a pressure of 1,090 p.s.i.g. Accordingly, the line was tested to permit it to be operated at such pressure. Petitioner states that its reserves in the Woodward area have increased to a point where the existing maximum allowable operating pressure on the 16-inch line has become a limiting factor in the purchase of gas in the Woodward Area and that, therefore, it has retested the line to qualify it for operation at a maximum allowable operating pressure of 1,170 p.s.i.g. Petitioner proposes to operate the 16-inch line at 1,170 p.s.i.g. and states that the Mooreland Compressor Station will discharge gas at 1,170 and that the normal pressure drop through the 16-inch line will result in gas flowing into the 20-inch line at less than 935 p.s.i.g., the maximum allowable operating pressure of the 20-inch line.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before December 28, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.71-18232 Filed 12-13-71;8:47 am]

[Docket No. E-7625]

MISSISSIPPI POWER CO.

Order Providing for Hearing, Establishing Procedures, Accepting for Filing and Suspending Original Tariff, Permitting Interventions, and Denying Petition for Rejection

DECEMBER 3, 1971.

Mississippi Power Co. sells electric energy at wholesale to certain rural electric cooperatives in southeastern Mississippi. Prior to the issuance of Commission Opinion No. 593 on February 18, 1971, the company charged a dual rate for all such sales, the effect of which was to impose a surcharge on power to be resold by the cooperatives to large consumers. The Commission in Opinion No. 593 determined that the dual rate provision was unduly discriminatory and therefore unlawful under the Federal Power Act, and required the company to eliminate such provision from its filed rate schedules.

Pursuant to this order, the company filed herein on April 19, 1971 a proposed original FPC Electric Tariff, Original Sheets 1 through 14, together with certain supporting documents. This filing was noticed on April 28, 1971, but was not assigned a filing date because it was incomplete. The filing was completed on October 4, 1971, with a proposed effective date 60 days thereafter, or December 4, 1971.

The company's proposed tariff contains a single increased rate for wholesales of electric energy to the cooperatives, in place of the formal dual rate, and in addition embodies certain substantive changes in the terms and provisions of the existing contracts between the parties. Also contained in the proposed tariff is the following declaration:

Pending effectiveness of this Tariff, the company considers that the surcharge or "dual rate" provisions of the company's FPC Schedules presently on file with the Commission are inoperative effective February 18, 1971 in conformity to the Commission's order in Docket E-7112, and does not propose to apply such provisions to service on and after such date, and the company considers that its Rate Schedule MRA-9 is the rate applicable to cooperative wholesale service, and will remain such, until this tendered Tariff, or some other provisions, become effective for such service.

There is no dispute as to the company's charges to the cooperatives following the issuance of Opinion No. 593. Such charges have been fully in compliance with the order. Since the dual rate provision was found to be unlawful, such provision must be deemed void and inoperative, and of no force and effect. Actual physical deletion of the dual rate provision would not appear to be immediately necessary. We therefore conclude that the company's charges have been in compliance with Opinion No. 593. In this circumstance, it is unnecessary to attempt to construe the subject filing in Docket No. E-7625 as a compliance filing pursuant to Opinion No. 593, and it should instead be recognized as being a general rate increase filing made pursuant to section 205 of the Federal Power Act. It will be so treated.

On May 26, 1971, petitions to intervene were filed by Coast Electric Power Association, East Mississippi Electric Power Association, and Singing River Electric Power Association. Each cooperative purchases power from Mississippi Power Co. The cooperatives protest the proposed rate increase and urge that it be rejected by the Commission in each instance where the existing contracts do not specifically authorize a rate increase filing, relying on "F.P.C. v. Sierra Pacific Power Co.", 350 U.S. 348 (1956) and "United Gas Pipe Line Co. v. Mobile Gas Service Corp.", 350 U.S. 332 (1956). There are fundamental differences between Sierra and Mobile and Mississippi Power Co.'s rate increase here involved which may remove this case from the Mobile and Sierra doctrine. In Sierra, Pacific Gas and Electric Co. without the consent of the purchaser, Sierra Pacific Power Co. filed with this Commission a unilateral rate increase under section 205 of the Federal Power Act. There was no provision authorizing such filing in the underlying contract between the parties. In the case before us, Mississippi Power Co. is filing for a single increased rate to replace the dual rate structure declared unlawful by this Commission in a proceeding which the Commission itself instituted.[1] The dual rate having been declared unlawful, the company is now seeking a uniform single rate to replace it. The right of the company to file for an increase in its rates was clearly set forth in Opinion No. 593, in which the Commission stated:

* * * Our purpose in this proceeding has not been to reduce MPCo.'s revenues. Thus, while we cannot on the present record order an increase, for the reasons described above, equally we are unwilling to force a reduction on MPCo. (p. 12)

* * * If in fact MPCo.'s rates are bringing an inadequate return, its remedy is clear. As the court observed in Georgia Power, our "door is open" for appropriate filings under the Federal Power Act. (p. 7)

The motion of the cooperatives for rejection of the company's filing will therefore be denied. However, the issues raised by the cooperatives cannot be decided on the basis of the pleadings and it is therefore necessary and appropriate that these issues be set for hearing in order to provide all parties with an opportunity to present evidence thereon. By placing the proposed rates into effect subject to refund with interest the customers will be protected against overcharges under tariff provisions which may be found by the Commission to be unjustified. A suspension of the proposed rates for 30 days will permit the customers to adjust their rates and also protect the company from any further revenue reduction resulting from the elimination of the dual rate provisions found to be unlawful in Opinion No. 593. Accordingly, the company's proposed rate increase will be suspended for 30 days and when placed into effect after the suspension period, it will be made subject to refund of all amounts found by the Commission after hearing not to be justified, together with interest on any amount refunded.[2]

The Commission finds:

(1) It is necessary and proper in the public interest and in carrying out the provisions of the Federal Power Act that the Commission enter upon a hearing concerning the lawfulness of the rates, charges, classifications, services, and other provisions contained in Mississippi Power Co.'s proposed FPC Electric Tariff, and that such tariff be suspended, and the use thereof deferred as herein provided.

(2) The petitions to intervene in this proceeding filed by Coast Electric Power Association, East Mississippi Electric Power Association, and Singing River Electric Power Association should be granted.

The Commission orders:

(A) Pursuant to the authority of the Federal Power Act, particularly sections 205, 206, 308, and 309, thereof, the Commission's rules of practice and procedure, and the regulations under the Federal Power Act a public hearing shall be held concerning the lawfulness of the rates, charges, classifications, services, and other provisions contained in Mississippi Power Co.'s proposed FPC Electric Tariff, commencing with a prehearing conference to be held on February 22, 1972.

(B) Pending such hearing and decision thereon, Mississippi Power Co.'s proposed FPC Electric Tariff, Original Volume No. 1, consisting of original tariff sheets 1 through 14, is hereby accepted for filing, suspended, and its use deferred until January 4, 1972.

(C) At the prehearing conference on February 22, 1972, the direct evidence of the company and the staff shall be admitted into the record, subject to appropriate motions, if any, by the parties to the proceeding, and procedures adopted for an orderly and expeditious hearing.

(D) On or before February 15, 1972, the Commission staff shall serve its prepared testimony and exhibits if any. The prepared testimony and exhibits of any and all intervenors shall be served on or before February 29, 1972. Any rebuttal evidence by Mississippi Power Co. shall

[1] Order to show cause, Docket No. E-7112, issued July 15, 1963. (30 FPC 198)

[2] By supplemental protest and petition filed on Nov. 29, 1971, the Cooperatives reiterate the arguments advanced in their original petition, including their request for a 5-month suspension period, citing the Economic Stabilization Act of 1970, as amended, as a further basis for a 5-month suspension period. We have determined that the placing into effect of the proposed rate increase is consistent with the Economic Stabilization Act of 1970, as amended, because it is made subject by this order to reduction and to refund with interest by the company of all amounts ultimately determined by the Commission not to be justified.

be served on or before March 21, 1972. Cross-examination of the evidence filed shall commence at 10 a.m. on March 28, 1972, in a hearing room of the Federal Power Commission.

(E) Within 30 days from the date of this order the company shall file with the Commission completed contracts for each customer to be served thereunder. (Original tariff sheets Nos. 11, 12, and 13.) These contracts need not be executed.

(F) Within 30 days from the date of this order, the company shall also file a completed contract supplement for each delivery point to be served. (Original tariff sheet No. 14.) These supplements need not be executed.

(G) To the extent not granted by this order the Cooperatives' petition of May 26, 1971, as supplemented on November 29, 1971, is denied.

(H) Any revenue collected under increased rates and charges found by the Commission in this proceeding to be not justified shall be refunded and shall bear simple interest at the rate of 7 percent per annum. Mississippi Power Co. shall bear all costs of refunding; shall keep accurate accounts in detail of all amounts received by reason of the increased rates and charges which become effective at the termination of the suspension period, and shall file with the Commission a monthly written report in duplicate and under oath for each billing period. Such report shall set forth (1) the billing determinants of electric power and energy sold and delivered during the billing period, and (2) the revenues resulting from such sales and deliveries computed under the company's present rate and under the increased rate, and shall show the differences in revenues so computed.

(I) A Presiding Examiner to be designated by the Chief Examiner for that purpose shall preside at the hearing initiated by this order, and shall conduct such hearing in accordance with the terms of this order, the Commission's rules of practice and procedure, and the Federal Power Act.

(J) Coast Electric Power Association, East Mississippi Electric Power Association, and Singing River Electric Power Association are hereby permitted to intervene in this proceeding, subject to the rules and regulations of the Commission: *Provided, however,* That the participation of such intervenors shall be limited to matters affecting the rights and interests specifically set forth in their petition to intervene: *And provided, further,* That the admission of such intervenors shall not be construed as recognition that they might be aggrieved because of any order issued by the Commission in this proceeding.

(K) In the event this proceeding is not concluded prior to the termination of the suspension period herein ordered, the placing of the tariff changes applied for in this proceeding into effect subject to refund with interest while pending Commission determination as to their justness and reasonableness is consistent with the purposes of the Economic Stabilization Act of 1970, as amended.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.71-18233 Filed 12-13-71;8:47 am]

[Docket No. CP72-139]

SOUTHERN NATURAL GAS CO.

Notice of Application

DECEMBER 6, 1971.

Take notice that on November 22, 1971, Southern Natural Gas Co. (applicant), Post Office Box 2563, Birmingham, AL 35202, filed in Docket No. CP72-139 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon by sale to Atlanta Gas Light Co. (Atlanta) approximately 18.6 miles of applicant's existing lateral line to Newnan, Ga., and two metering stations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The Newnan lateral line consists of approximately 18.6 miles of 6⅝-inch pipeline, reinforced by two 4½-inch lines crossing the Chattahoochee River, extending from a point on applicant's main north line in Douglas County, through Fulton County to Newnan in Coweta County in Georgia. The metering stations are located near Newnan.

Applicant states that Atlanta desires to employ the Newnan lateral in connection with its distribution facilities to satisfy increased market growth in the area. Applicant also states that the abandonment will have no effect on its design daily delivery capacity and that no service will be discontinued or diminished by reason of the proposal. After abandonment by the sale of the above facilities, applicant proposes to provide Atlanta with a new delivery point at the junction of the Newnan lateral line and Southern's main north line in Douglas County for service to the areas served by the existing facilities for which abandonment is sought. Applicant will construct such new measuring station within the contemplation of § 2.55 of the Commission's General Policy and Interpretations (18 CFR 2.55), and Atlanta will reimburse applicant for all costs and expenses incurred in constructing said facility. The purchase price of all facilities is approximately $50,000, the depreciated original cost of such facilities, as determined at the time of closing.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 27, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.71-18234 Filed 12-13-71;8:47 am]

[Docket No. CP72-135]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Notice of Application

DECEMBER 6, 1971.

Take notice that on November 17, 1971, Transcontinental Gas Pipe Line Corp. (applicant), Post Office Box 1396, Houston, TX 77001, filed in Docket No. CP72-135 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas through existing facilities for Sun Oil Co. (Sun), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that Sun desires to engage in a pressure maintenance program in the Fordoche Field, Pointe Coupee Parish, La. Therefore, pursuant to the terms of an agreement between the parties, Sun proposes to deliver, or cause to be delivered by United Gas Pipe Line Co., to applicant up to 10,000 Mcf of natural gas per day at 15.025 p.s.i.a. on a firm basis, from the Chacohoula Field, Terrebonne Parish, La., or from the tailgate of Sun's Starr Gasoline Plant, Starr County, Tex. Applicant will deliver equivalent volumes of gas to Sun at an interconnection between their facilities in the Fordoche Field. Sun also desires to deliver, or cause to be delivered, to applicant up to 5,000 Mcf of natural gas per day at 15.025 p.s.i.a. on an interruptible basis. Applicant states that it will accommodate and redeliver such additional volumes.

For the firm transportation service proposed herein, Sun will pay applicant the annual sum of $186,515. Interruptible volumes will be transported at a charge of 5.11 cents per Mcf.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 27, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.71-18235 Filed 12-13-71;8:47 am]

[Docket No. RP72-75]

UNITED GAS PIPE LINE CO.

Notice of Application for Increase in Resale Rates

DECEMBER 7, 1971.

Take notice that on November 30, 1971, United Gas Pipe Line Co. filed in Docket No. RP72-75 an application for an increase in its resale rates. The company's letter of transmittal appears below.[1]

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 441 G Street NW., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 29, 1971. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. The company's application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.71-18236 Filed 12-13-71:8:47 am]

[1] Filed as part of the original document.

[Docket No. E-7603]

IOWA ELECTRIC LIGHT & POWER CO.

Notice of Application

DECEMBER 9, 1971.

Take notice that on November 18, 1971, Iowa Electric Light & Power Co. (applicant) filed an application seeking authority pursuant to section 204 of the Federal Power Act to extend to not later than December 31, 1973, the final maturity date, and increase to $40 million the maximum amount authorized to be outstanding at any one time, of short-term unsecured promissory notes authorized to be issued under the Commission's order of April 22, 1971, in Docket No. E-7603. In that original order, the Commission authorized the applicant to issue short-term promissory notes in face amounts of up to a maximum of $30 million with final maturities not later than December 31, 1972.

Applicant is incorporated under the laws of the State of Iowa and is authorized to do business in the States of Iowa, Minnesota, Colorado, and Nebraska, with its principal business office at Cedar Rapids, Iowa. Applicant is engaged primarily in the generation, transmission and sale at retail of electric energy in 51 counties in the State of Iowa.

The notes are to be issued to commercial banks and to commercial paper dealers or either of such types of facilities and will have a term not in excess of 1 year with a final maturity date of not later than December 31, 1973. Interest on the notes to banks will be the prime rate currently in effect or the prime rate in effect at the time of borrowing. The interest rate on commercial paper will be at the rate then in effect of such commercial paper of such quality and term.

The proceeds from the issuance of the notes are to provide funds for the construction, completion, extension and improvement of applicant's facilities. The estimated construction program totals $52.2 million and $56.7 million in 1971 and 1972 respectively, and includes the expenditure of $37.3 million and $40.8 million in such years, respectively, for its share of the cost of construction of a 550,000-kw. generating station being constructed on a site near Palo, Iowa. Two Iowa generating and transmission cooperatives, Central Iowa Power Cooperative and Corn Belt Power Cooperative will have a 20 percent and 10 percent undivided ownership, respectively, in this plant and its generating capacity.

Any person desiring to be heard or to make protest with reference to the application should, on or before December 23, 1971, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 71-18345 Filed 12-13-71; 8:50 am]

FEDERAL RESERVE SYSTEM

GOODYEAR TIRE & RUBBER CO.

Order Approving Exemption of Nonbanking Activities of Bank Holding Company

The Goodyear Tire & Rubber Co., Akron, Ohio (Applicant), a bank holding company by virtue of 100 percent ownership (less directors' qualifying shares) of the Goodyear Bank, Akron, Ohio (Bank), has applied to the Board of Governors, pursuant to section 4(d) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(d)), for an exemption from the prohibitions of section 4 (relating to nonbanking activities and acquisitions).

Notice of receipt of the application was published in the FEDERAL REGISTER on August 5, 1971 (36 F.R. 14422), providing an opportunity for interested persons to submit comments and views or request a hearing with respect to this matter. Time for filing comments and views has expired and all those received have been considered. No request for a hearing has been received.

Section 4(d) of the Act provides that, to the extent such action would not substantially be at variance with the purposes of the Act and subject to such conditions as it considers necessary to protect the public interest, the Board may grant an exemption from section 4 of the Act to any bank holding company which controlled one bank prior to July 1, 1968, and has not thereafter acquired the control of any other bank in order (1) to avoid disrupting business relationships that have existed over a long period of years without adversely affecting the banks or communities involved, (2) to avoid forced sales of small locally owned banks to purchasers not similarly representative of community interests, or (3) to allow retention of banks that are so small in relation to the holding company's total interests and so small in relation to the banking market to be served

as to minimize the likelihood that the bank's powers to grant or deny credit may be influenced by a desire to further the holding company's other interests.

The Board has considered the application in the light of the factors set forth in section 4(d) of the Act, and finds that:

Goodyear, located in Akron, Ohio, since its organization in 1898, is this country's major manufacturer of tires and rubber products ($3.2 billion in net sales in 1970). It established Bank in 1933 to provide its employees with a safe depository for their funds. Approximately 50 percent of Bank's customers are Applicant's employees. The ownership has existed for nearly 40 years, a period of affiliation of sufficient duration to bring Applicant within the time frame of section 4(d)(1). The relationship has not had an adverse effect on the bank or communities involved. Bank (deposits $96 million)[1] has been conservatively managed and its capital position has remained strong.[2] There has been no misuse of Bank by Applicant.

Bank's total assets ($108 million) are about 3 percent of Applicant's consolidated nonbank assets and represent less than 1 percent of Applicant's earnings and net worth, a size disparity within the limits of section 4(d)(3). Bank has its main office in the city of Akron and operates seven branches in Summit County. The Akron banking market, which includes Summit and Portage Counties, is served by 14 banks, five of which are headquartered in Akron. Bank is the smallest of those five banks, and controls 7.2 percent of market area deposits. It is about one-fifth the size of the largest independent Akron bank, which controls 36.6 percent of market deposits, and competes with Ohio's three largest multibank holding companies, which control the second, sixth and eighth largest banks in the market area.[3]

The legislative history of section 4(d) indicates that Congress considered Applicant likely to be one of the companies entitled to an exemption. (116 Cong. Rec., H11790, S20653) After review of the entire record, the Board concludes that the granting of the subject application would not be substantially at variance with the purposes of the Act.

On the basis of the record, the application is approved for the reasons summarized above, provided, however, that this determination is subject to revocation by the Board if the facts upon which it is based change in any material respect.[4]

[1] Banking data are as of December 31, 1970.

[2] Applicant has never withdrawn cash dividends from Bank; thereby permitting Bank to retain all of its net earnings after taxes to strengthen its equity position.

[3] An application is pending before the Board whereby, if approved the fourth largest bank in the market area would be controlled by a newly formed holding company which would become the State's second largest holding company.

[4] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Maisel, and Brimmer. Absent and not voting: Governor Sherrill.

By order of the Board of Governors, December 7, 1971.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc. 71-18217 Filed 12-13-71;8:45 am]

OLIN CORP.

Order Granting Exemption

Olin Corp., a Virginia corporation with principal offices in New York, N.Y., is a bank holding company within the meaning of the Bank Holding Company Act of 1956, by virtue of ownership of 59 percent of the shares of Illinois State Bank of East Alton, East Alton, Ill. (Bank), and has applied to the Board of Governors pursuant to section 4(d) of the Act (12 U.S.C. 1843(d)) for an exemption from the provisions of section 4 relating to prohibitions against nonbanking activities and acquisitions.

Notice of receipt of the application was published in the FEDERAL REGISTER on August 11, 1971 (36 F.R. 14786). Time for filing coments and views has expired and all received have been considered. No request for a hearing has been received.

Section 4(d) of the Act provides that to the extent such action would not be substantially at variance with the purposes of the Act and subject to such conditions as the Board considers necessary to protect the public interest, the Board may grant an exemption from the provisions of section 4 of the Act to certain one-bank holding companies in order (1) to avoid disrupting business relationships that have existed over a long period of years without adversely affecting the banks or communities involved, or (2) to avoid forced sales of small locally owned banks to purchasers not similarly representative of community interests, or (3) to allow retention of banks that are so small in relation to the holding company's total interests and so small in relation to the banking market to be served as to minimize the likelihood that the bank's powers to grant or deny credit may be influenced by a desire to further the holding company's other interests.

Olin Corp., a diversified industrial corporation with assets in excess of $1 billion, is engaged in a variety of domestic and foreign activities in the fields of chemicals, paper, film, nonferrous metals, forest products, home building, and recreational products including arms and ammunition. Applicant or predecessor companies have operated in East Alton, Ill. (population 7,309) since 1892 and Applicant states that its plant in that community presently employs approximately 5,000 people. Apparently, predecessors of Applicant acquired a majority of the shares of Bank between 1919 and 1922, reportedly to provide employees of the plant with convenient banking services and improve public confidence in the Bank. Applicant now owns 59 percent of the stock of Bank, and two directors of Applicant own, respectively, an additional 2 and 3.4 percent of Bank's stock. Applicant or its predecessors have held control of Bank continuously for the past 50 years; and it appears that the relationship between Applicant and Bank has been beneficial to Bank and to the residents of the East Alton community, many of whom are employed at Applicant's plant there.

Bank (about $18 million of deposits) was established in 1904 in Bethalto, Ill., and moved to its present location near the main gate of Applicant's East Alton plant in 1916. Although it is the only bank in East Alton, Bank is one of 20 banks located in Madison County and holds 4.6 percent of total commercial bank deposits in the county. East Alton is located approximately 20 miles from St. Louis, Mo., and is included in the St. Louis Standard Metropolitan Statistical Area. Bank's deposits amount to 0.3 percent of the total commercial bank deposits of the approximately 150 banks in the St. Louis area. The large number of competing commercial banks located within a few miles of East Alton provide numerous banking alternatives to residents of that community. However, the location of Bank in East Alton has provided its residents with convenient access to financial services.

Bank's total assets (about $20 million) amount to less than 2 percent of Applicant's total assets of over $1 billion. The net income of Bank constitutes only a fraction of 1 percent of Applicant's total income.

The record contains nothing to suggest that Applicant has misused Bank's services for the benefit of Applicant's other interests and, in view of the size disparity between Bank and Applicant, and the small size of Bank in relation to the surrounding banking market, future misuse of Bank by Applicant seems unlikely.

Based on the foregoing and other considerations reflected in the record, the Board has determined, pursuant to section 4(d)(1) of the Act, that an exemption is warranted to avoid disrupting a business relationship that has existed over a long period of years without adversely affecting the banks or the communities involved; and pursuant to section 4(d)(3), that Bank is so small in relation to the total interests of Olin Corp. and so small in relation to the banking market served by Bank as to minimize the likelihood that Bank's powers to grant or deny credit may be influenced by a desire to further Olin's other interests. Accordingly, an exemption pursuant to section 4(d) of the Act is hereby granted; provided, however, that this determination is subject to revocation if the facts upon which it is based change in any material respect.[1]

By order of the Board of Governors, December 7, 1971.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.71-18218 Filed 12-13-71;8:45 am]

[1] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Maisel, and Brimmer. Absent and not voting: Governor Sherrill.

UNITED BANKS OF COLORADO, INC.

Order Approving Acquisition of Bank

United Banks of Colorado, Inc., Denver, Colo., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 80 percent or more of the voting shares of Colorado Commercial Bank, Colorado Springs, Colo. (Bank).

Notice of receipt of the application has been given in accordance with section 3(b) of the Act, and the time for filing comments and views has expired. The Board has considered the application and all comments received in the light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)) and finds that:

Applicant is the second largest banking organization and bank holding company in Colorado controlling nine banks which hold 14.7 percent of total desposits in commercial banks in Colorado ($641.7 million). (Banking data are as of December 31, 1970, amended to reflect holding company formations and acquisitions approved to date.) Consummation of the proposal would give Applicant control over an additional 0.4 percent of total deposits and would not change its ranking. It would, however, make Applicant the first holding company to have a banking subsidiary in each of the six principal banking markets in Colorado. Bank (deposits $16.3 million) is the smallest of four banks located in downtown Colorado Springs and is the fifth largest in the Colorado Springs banking market. Applicant's nearest subsidiary is in Pueblo, 43 miles south of Bank, and there is no significant competition between Bank and this or any other of Applicant's subsidiaries. Consummation of the proposal would have no adverse effects on existing competition and, due to the distances separating Bank and Applicant's subsidiaries and Colorado law prohibiting branching, would be unlikely to have any adverse effects on future competition. Bank is presently affiliated by common ownership with the second largest bank in the market and consummation of the proposal would have a procompetitive effect by breaking that affiliation and adding a new competitor to the market.

The financial and managerial condition and prospects of Applicant and its subsidiary banks are (upon consideration of a proposed augmenting of capital) satisfactory and consistent with approval. Bank's financial and managerial condition are satisfactory. Bank has failed to keep pace in deposit growth with other banks in the market. Applicant's corporate marketing group and its expertise in the fields of advertising, market research and industrial development should assist in bank's growth and Bank's prospects are favorable. These considerations lend some weight toward approval. The banking convenience and needs of the Colorado Springs area seem adequately served. However, Applicant should enable Bank to upgrade its services and these considerations lend some weight toward approval. It is the Board's judgment that the proposed transaction is in the public interest and should be approved.

On the basis of the record, the application is approved for the reasons summarized above.[1] The transaction shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Kansas City pursuant to delegated authority.

By order of the Board of Governors, December 7, 1971.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.71-18219 Filed 12-13-71;8:45 am]

FEDERAL WORKING GROUP ON PEST MANAGEMENT

REVISION AND REORGANIZATION OF CHARTER

A. *Establishment.* A working group of the Subcommittee on Pesticides of the Cabinet Committee on the Environment (formerly Environmental Quality Council) was established pursuant to action of the Committee (Council) announced on November 20, 1969. By White House memo of October 29, 1970, the working group on pesticides was made responsible to the Council on Environmental Quality. On December 2, 1970, the Environmental Protection Agency was established. This charter is revised to reflect these organizational changes within the Federal Government.

The following agencies will have membership on the working group:

Department of Agriculture.
Department of Health, Education, and Welfare.
Department of the Interior.
Department of Defense.
Department of Transportation.
Department of State.[2]
Department of Commerce.
Environmental Protection Agency.

The Council on Environmental Quality, the Office of Science and Technology, the Office of Management and Budget and the Office of Intergovernmental Relations may designate an observer at the meetings of the Federal Working Group. Other agencies may be invited to participate.

The Federal Working Group will consist of one principal authorized to commit his agency in routine coordination and on most issues, and to make reservations on behalf of his agency on controversial issues. At the request of a majority of principals, departmental or agency issues may be referred to the Council on Environmental Quality for review prior to implementation.

Each member agency will name one or more alternates to speak for that agency in the absence of the principal. Other individuals, cognizant of the pesticide programs and responsibilities of their agencies, may attend meetings to provide technical support for the principal.

B. *Purpose.* The Federal Working Group is the primary staff level coordinating mechanism for Federal activities concerning pesticides, pests, and pest management. The activities coordinated by the Federal Working Group include but are not limited to:

a. Pest control programs in various parts of the world in which there is active participation on the part of the Federal Government, either in funding or in supervision;

b. Research on pests and their control and effects of management procedures, whether by chemical or other methods;

c. Monitoring of the environment for pesticides and their residues;

d. Establishment of survey investigation teams to conduct special investigations of problems which arise or which may be anticipated;

e. Public information on pest management and the use of pesticides;

f. Evaluation of economic and social values and risks involved in the control or noncontrol of pests by various methods;

g. Development and coordination of safety measures in the use and disposal of pesticides; and

h. Training programs that will result in an adequate level of competence by Federal employees in utilizing and prescribing various control techniques.

The Federal Working Group shall advise the Council on Environmental Quality and the appropriate Federal departments and agencies concerning matters of common interest. In no case, however, will the Federal Working Group supersede the responsibility of each agency to carry out the functions assigned to it by legislative and executive mandates. The Federal Working Group will encourage exchange of information among international, Federal, State, and local agencies and may participate with them as appropriate.

C. *Procedures*—1. *Review of programs and statements.* a. On request, any Federal agency shall submit to the Federal Working Group for review a detailed description of its proposed and current pest control programs and monitoring, research, education, and other programs pertaining to pest management.

b. The Federal Working Group will review such control programs from the standpoint of effectiveness, economic impact, and hazards to human health,

[1] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Maisel, and Brimmer. Absent and not voting: Governor Sherrill.

[2] The intent is to assure adequate consideration of international concerns which are largely but not wholly represented within the Agency for International Development.

to livestock and crops, to fish or wildlife, and to other elements of the environment.

c. Based on such review, the Federal Working Group shall recommend to the heads of the departments or agencies concerned such modifications in the programs as the Federal Working Group feels will best serve the public interest.

d. The Federal Working Group reviews environmental impact statements for agencies, with reports of comments returned to them (with copies to CEQ).

2. *Intergovernmental cooperation.* a. The Federal Working Group shall promote or encourage review of both Federal and non-Federal programs by State and local groups representing a broad spectrum of interests and responsibilities.

b. The Federal Working Group may communicate with such State and local groups to exchange information and recommendations, either directly or through member departments, whichever seems most expeditious and effective.

c. Subject to foreign policy guidance from the Department of State, the Federal Working Group may participate in joint activities with foreign or international groups having similar interests and may coordinate these activities with among Federal and State agencies. Informal recommendations arising from such joint activities may be directed by the Federal Working Group to the concerned Federal department or agency. No formal recommendations shall be transmitted directly to any foreign government or international agency.

3. *Stimulation of new activities.* Whenever the Federal Working Group feels that the public interest will be served by the initiation of new activity, such as interdepartmental participation in integrating a variety of pest management methods or in analyzing jointly the efforts of such integrated control on all aspects of the environment, the Federal Working Group may recommend appropriate action to the Council on Environmental Quality and to the concerned agencies and States.

4. *Mechanisms available to the Federal Working Group.* a. The Federal Working Group may establish ad hoc groups or panels of specialists to assist in discharging the Federal Working Group's responsibilities. Memberships on such ad hoc groups need not be limited to representatives of Federal departments.

b. The Federal Working Group may request the appropriate agencies to provide special services, consultation, staff, facilities, publications, conferences, etc., as may facilitate the work of the Federal Working Group. Expenditure of appropriated funds for such activities of the Federal Working Group must be within the authority and area of responsibility of the contributing department or agency and must remain within its individual fiscal control, even though the technical supervision may be provided by the Federal Working Group.

D. *Membership.* Membership and observer status on the Federal Working Group is by appointment of principals and alternates by letter to the Chairman of the Federal Working Group from the heads of agencies concerned. On invitation of the Federal Working Group, a liaison representative may be similarly appointed by other Government agencies having an interest in problems related to pest control.

E. *Officers and staff.* 1. The officers of the Working Group shall be:

Chairman
Vice Chairman
Executive Secretary

The Chairman and Vice Chairman shall be elected from among members of the Federal Working Group. The Chairman will be elected for a 2-year term (to be ineligible for more than one additional successive term) and his successor will be elected from a different department. The Vice Chairman will also be elected for a 2-year term but from a different department than the Chairman (to be ineligible for more than one additional term).

2. The staff of the Working Group shall include such professional and other staff as may be required. The Executive Secretary will be appointed by the agency administratively supporting it, from among nominations submitted by the Federal Working Group.

3. It shall be the duty of the Chairman to preside at all meetings and to assure compliance with the charter of the Federal Working Group. He shall call meetings of the Federal Working Group when he deems it necessary or on request of any member department. The Chairman shall exercise leadership in seeking timely interagency coordination on items of concern to the Federal Working Group. The Chairman may communicate directly with the Chairman of the Council on Environmental Quality and the heads of agencies.

4. In the absence of the Chairman, the Vice Chairman will perform the functions of the Chairman.

5. The Executive Secretary will be responsible for:

a. Preparation of agenda, notice of meetings, correspondence, coordination of administrative matters and representation of the Federal Working Group as requested by the Chairman;

b. Preparation and recommendation to the Working Group of pertinent policies and plans to meet the Federal Working Group requirements; to this end, the Executive Secretary may request the Chairman to appoint advisory and other ad hoc groups as required; and

c. Maintenance of minutes, sufficient other records and accounts to provide an annual report of the Federal Working Group activities for such distribution as recommended by the Federal Working Group.

F. *Meetings.* 1. Meetings shall be held at the call of the Chairman, following coordination with members regarding time, place, and date.

2. Decisions of the Federal Working Group usually shall be made at regular meetings where there is an opportunity for discussion and not by correspondence nor telephone calls, except in rare cases of urgency.

3. Minutes of meetings shall consist of a record of important discussions and decisions of the Federal Working Group but need not be a verbatim record. Minutes shall be distributed to principals, alternates, and observers.

G. *Quorum.* A majority of the members of the Federal Working Group shall constitute a quorum authorized to transact any business duly presented at any meeting of the Federal Working Group.

Approved.

RUSSELL E. TRAIN,
Chairman, Council on Environmental Quality.

[FR Doc.71-18216 Filed 12-13-71;8:48 am]

SECURITIES AND EXCHANGE COMMISSION

[812-3041]

VANCE, SANDERS SPECIAL FUND, INC., AND M. COLYER CRUM

Notice of Filing of Application for Exemption and Order Granting Temporary Relief

DECEMBER 7, 1971.

Notice is hereby given that Vance, Sanders Special Fund, Inc. (Fund), 111 Devonshire Street, Boston, MA 02109, a Massachusetts corporation registered under the Investment Company Act of 1940 (Act) as an open-end diversified management investment company, and M. Colyer Crum (Crum), Graduate School of Business Administration, Harvard University, Soldiers Field, Boston, Mass., a director of the Fund (collectively referred to hereafter as "Applicants"), have filed an application for an order pursuant to section 6(c) of the Act exempting Crum from the classification of "interested person" as defined in section 2(a)(19) of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein which are summarized below.

Crum, in addition to being a director of the Fund, is also a director of Pennsylvania Life Co. (Penn Life) and a member of its finance committee. Penn Life, a holding company incorporated in Delaware, derives the major portion of its income from two subsidiary insurance companies, although it is also involved, through subsidiaries and affiliates, in the securities brokerage business and in the sale of mutual fund shares to the public.

Penn Life owns all of the capital stock of Penn Funding, Inc. (Penn Funding), a holding company which in turn owns all of the capital stock of four broker-dealer companies registered under the Securities Exchange Act of 1934. Penn Life also owns all of the capital stock of Mayflower, Inc., which owns 99.9 percent of the capital stock of Massachusetts Indemnity and Life Insurance Co. (MILICO), a Massachusetts insurance company. Crum is a director and a member of the investment committee of

MILICO. Neither Penn Life nor MILICO is a registered broker or dealer. Crum, in his capacities with both Penn Life and MILICO, is alleged to have no direct supervisory authority over, or direct responsibility for the management or operation of, Penn Funding or of any of its broker-dealer subsidiaries.

Section 2(a)(19) of the Act, in pertinent part, defines an interested person of another person as any broker or dealer reigstered under the Securities Exehange Act of 1934 or any affiliated person of such a broker or dealer.

Section 2(a)(3) of the Act includes in the definition of an "affiliated person" of another person, any director of such other person.

Section 6(c) of the Act provides, in part, that the Commission may conditionally or unconditionally exempt any person from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants represent that if Crum is an "interested person" of the Fund, his affiliations with Penn Life and MILICO will not impair his independence in acting on behalf of the Fund and the shareholders of the Fund, and that the requested exemption is therefore consistent with the provisions of section 6(c).

The Act, as amended by the Investment Company Amendments Act of 1970, effective December 14, 1971, prohibits a Fund from, for example, performing under an investment advisory contract or underwriting agreement unless the terms of such contract or agreement have been approved by the vote of a majority of directors who are not parties to such contract or agreement or interested persons of any such party. In order that there should be no question of Fund's compliance with the Act, as amended, pending resolution of this application, it is necessary that there be issued, together with the notice of the application, a temporary order pursuant to section 6(c) of the Act exempting Crum from the definition of an "interested person" contained in section 2(a)(19) of the Act until a further order of the Commission on this application is issued.

Accordingly, it is ordered, Pursuant to section 6(c) of the Act, that Crum be exempted from the definition of an "interested person" contained in section 2(a)(19) of the Act to the extent he would come within such definition by reason of his being a director of Penn Life, which exemption is to continue pending a further order of the Commission.

Notice is further given that any interested person may, not later than December 28, 1971, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application as described above, accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicants at the addresses stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application unless an order for a hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc. 71-18220 Filed 12-13-71;8:45 a.m.]

TARIFF COMMISSION

[337-L-48]

COMBINATION FISH SCALER, HOOK REMOVER, AND RULE

Notice of Complaint Received

The U.S. Tariff Commission hereby gives notice of the receipt on October 27, 1971, of a complaint under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) filed by Fredrick Manufacturing Co. of Madison, Wis., alleging unfair methods of competition and unfair acts in the importation and sale of combination fish scaler, hook remover, and rules which are embraced within the claims of U.S. design Patent No. 219,974 owned by the complainant. The American Import Co., 1166 Mission Street, San Francisco, Calif., has been named as importer of the subject products.

In accordance with the provisions of § 203.3 of its rules of practice and procedure (19 C.F.R. 203.3), the Commission has initiated a preliminary inquiry into the allegations of the complaint for the purpose of determining whether there is good and sufficient reason for a full investigation, and if so whether the Commission should recommend to the President the issuance of a temporary order of exclusion from entry under section 337(f) of the Tariff Act.

A copy of the complaint is available for public inspection at the Office of the Secretary, U.S. Tariff Commission, Eighth and E Streets NW., Washington, DC 20436, and at the New York Office of the Tariff Commission located in Room 437 of the Customhouse.

Information submitted by interested persons which is pertinent to the aforementioned preliminary inquiry will be considered by the Commission if it is received not later than January 21, 1972. Such information should be sent to the Secretary, U.S. Tariff Commission, Eighth and E Streets NW., Washington, DC 20436. A signed original and nineteen (19) true copies of each document must be filed.

Issued: December 9, 1971.

By order of the Commission.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.71-18251 Filed 12-13-71;8:49 am]

[TEA-W-124 and TEA-W-125]

WORKERS' PETITIONS FOR DETERMINATION OF ELIGIBILITY TO APPLY FOR ADJUSTMENT ASSISTANCE

Notice of Investigations

On the basis of petitions filed under section 301(a)(2) of the Trade Expansion Act of 1962, on behalf of workers of—

TEA-W-124, Owensville Shoe Manufacturing Co., Owensville, Mo.
TEA-W-125, Brown Shoe Co., Vincennes, Ind.

the U.S. Tariff Commission, on the 8th day of December 1971, instituted investigations under 301(c)(2) of the said act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with the women's and misses' leather footwear and men's, youth's and boys' leather footwear produced by the aforementioned firms, respectively, are being imported into the United States in such increased quantities as to cause, or to threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of such firms.

The petitioners have not requested a public hearing. A hearing will be held on request of any other party showing a proper interest in the subject matter of the investigations, provided such request is filed within 10 days after publication of the notice in the FEDERAL REGISTER.

The petitions filed in this case are available for inspection at the Office of the Secretary, U.S. Tariff Commission, Eighth and E Streets NW., Washington, DC, and at the New York City office of the Tariff Commission located in Room 437 of the Customhouse.

Issued: December 9, 1971.

By order of the Commission.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.71-18252 Filed 12-13-71;8:49 am]

INTERSTATE COMMERCE COMMISSION

[Notice 410]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

DECEMBER 9, 1971.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67 (49 CFR Part 1131) published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 68917 (Sub-No. 7 TA), filed December 2, 1971. Applicant: H. P. WELCH CO., 400 Somerville Avenue, Somerville, MA 02143. Applicant's representative: George C. Shea (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, and except dangerous explosives, household goods, when transported as a separate and distinct service in connection with so-called "household moving" commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), serving the plantsite of Western Electric Co. at Southboro, Mass., as an off-route point in connection with authorized regular routes under certificates MC 68917 and Subs 1, 2, 3, and 5, for 150 days. NOTE: Applicant states it does intend to tack with its Subs 1, 2, 3, and 5, as set forth in application for permanent operating authority, Docket No. MC 68917 (Sub-No. 6). Supporting shipper: Western Electric Co., Inc., 222 Broadway, New York, NY 10038. Send protests to: John B. Thomas, District Supervisor, Interstate Commerce Commission, Bureau of Operations, John F. Kennedy Building, Government Center, Boston, Mass. 02203.

No. MC 71642 (Sub-No. 14 TA), filed December 2, 1971. Applicant: N. S. DESHONG, 3201 Mill Creek Road, Wilmington, DE 19808. Applicant's representative: Samuel W. Earnshaw, 833 Washington Building, Washington, D.C. 20005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Fiber sheets*, on pallets, from Yorklyn, Del., to Martinsville and Bassett, Va., and return movement of *rejected material and empty pallets*, for the account of NVF Co., Wilmington, Del., for 180 days. Supporting shipper: NVF Co., Wilmington, Del. 19899. Send protests to: Peter R. Guman, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1518 Walnut Street, Room 1600, Philadelphia, PA 19102.

No. MC 72495 (Sub-No. 10 TA), filed December 2, 1971. Applicant: DON SWART TRUCKING, INC., Route 2, Box 49, Wellsburg, WV 26070. Applicant's representative: D. L. Bennett, 129 Edgington Lane, Wheeling, WV 26003. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Rock dust*, in bags, from Benwood, W. Va., to points in Ohio on and east of U.S. Highway 21; and points in Pennsylvania on and west of U.S. Highway 219, for 180 days. Supporting shipper: Benwood Limestone Co., Inc., Benwood, W. Va. 26031. Send protests to: Joseph A. Niggemyer, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 416 Old Post Office Building, Wheeling, W. Va. 26003.

No. MC 103993 (Sub-No. 679 TA), filed December 2, 1971. Applicant: MORGAN DRIVE AWAY, INC., 2800 West Lexington Avenue, Elkhart, IN 46514. Applicant's representative: Ralph H. Miller (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Trailers*, designed to be drawn by passenger automobiles, in initial movements, and (2) *pickup caps and covers*, from points in Plymouth County, Mass., to points in the United States (except Alaska and Hawaii), for 180 days. Supporting shipper: Arnold Trailer, Inc., Nick Rock Road, Plymouth Industrial Park, Plymouth, Mass. 02360. Send protests to: Acting District Supervisor John E. Ryden, Bureau of Operations, Interstate Commerce Commission, Room 204, 345 West Wayne Street, Fort Wayne, IN 46802.

No. MC 107295 (Sub-No. 577 TA), filed December 3, 1971. Applicant: PRE-FAB TRANSIT COMPANY, Post Office Box 146, 100 South Main Street, Farmer City, IL 61842. Applicant's representative: Bruce J. Kinnee (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Overhead doors, door sections and parts, and accessories* used in the installation thereof, from Tiffin, Ohio, and Galesburg, Ill., to points in Louisiana, Arkansas, Oklahoma, and Texas, for 180 days. Supporting shipper: John E. Zoller, Marketing Manager, Quincy Manufacturing Co., Post Office Box 368, Wallstreet at Hudson, Tiffin, OH 44883. Send protests to: Harold C. Jolliff, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 325 West Adams Street, Room 476, Springfield, IL 62704.

No. MC 107295 (Sub-No. 578 TA), filed December 3, 1971. Applicant: PRE-FAB TRANSIT COMPANY, Post Office Box 146, 100 South Main Street, Farmer City, IL 61842. Applicant's representative: Bruce J. Kinnee (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Service station conversion packages, consisting of panels, shingles, outriggers, trusses, pylons, roofing material, plywood, siding, aluminum angles, aluminum studs, and accessories* used in the installation thereof, from Paris, Ill., to points in Indiana, Iowa, Michigan, Ohio, Missouri, and Wisconsin, for 180 days. Supporting shipper: Matthew J. Biemick, The Beaman Corp., Paris, Ill. 61944. Send protests to: Harold C. Jolliff, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 325 West Adams Street, Room 476, Springfield, IL 62704.

No. MC 108393 (Sub-No. 55 TA), filed December 3, 1971. Applicant: SIGNAL DELIVERY SERVICE, INC., 930 North York Road, Room 214, Hinsdale, IL 60521. Applicant's representative: Eugene L. Cohn, 1 North La Salle Street, Chicago, IL 60602. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Parts of electrical and gas appliances, and equipment, materials, and supplies* used in the manufacture, distribution, and repair of electrical or gas appliances, for the account of Whirlpool Corp., from Crestline, Ohio, to St. Joseph, Mich., for 180 days. Supporting shipper: Carl R. Anderson, Director of Corporate Traffic, Whirlpool Corp., Benton Harbor, Mich. 49022. Send protests to: William J. Gray, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1086, Chicago, IL 60604.

No. MC 112520 (Sub-No. 251 TA), filed December 2, 1971. Applicant: McKENZIE TANK LINES, INC., Post Office Box 1200, New Quincy Road, Tallahassee, FL 32302. Applicant's representative: Sol H. Proctor, 2501 Gulf Life Tower, Jacksonville, Fla. 32207. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wood rosin*, in bulk, dry, from Telogia, Fla., to Brunswick, Ga., for 180 days. Supporting shipper: Hercules, Inc., 900 Life of Georgia Tower, Atlanta, Ga. 30308. Send protests to: District Supervisor G. H. Fauss, Jr., Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

No. MC 117304 (Sub-No. 26 TA), filed December 3, 1971. Applicant: DON PAFFILE, doing business as PAFFILE TRUCK LINES, 2906 29th Street North, Lewiston, ID 83501. Applicant's representative: George R. LaBissioniere, 1424 Washington Building, Seattle, Wash. 98101. Authority sought to operate as a *common carrier*, by motor vehicle, over

irregular routes, transporting: *Lumber and lumber products*, from Lewiston, St. Maries, and Jaype, Idaho, to points in Colorado and Wyoming, for 180 days. Supporting shipper: Potlatch Forests, Inc., Lewiston, Idaho 83501. Send protests to: E. J. Casey, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 6130 Arcade Building, Seattle, Wash. 98101.

No. MC 117304 (Sub-No. 27 TA), filed December 3, 1971. Applicant: DON PAFFILE, doing business as PAFFILE TRUCK LINES, 2906 29th Street North, Lewiston, ID 83501. Applicant's representative: George R. LaBissoniere, 1424 Washington Building, Seattle, Wash. 98101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt and malt beverages*, from Golden, Colo., and Phoenix, Ariz., to points in Idaho, north of the southern boundary of Idaho and Lemhi Counties, Idaho, for 180 days. Supporting shippers: Mitchell Distributing Co., Inc., 517 Snake River Avenue, Lewiston, ID 83501; Empire Beverage of Lewiston, Inc., 0205 First, Lewiston, ID 83501; Don Lavoie Distributing, 1515 Northwest Boulevard, Post Office Box 777, Coeur D'Alene, ID 83814; Coors Alpine Sales Co., 1512 Government Way, Coeur D'Alene, ID 83814. Send protests to: E. J. Casey, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 6130 Arcade Building, Seattle, Wash. 98101.

No. MC 118865 (Sub-No. 10 TA), filed December 2, 1971. Applicant: CEMENT EXPRESS, INC., 1011 Morris Avenue, Post Office Box 38, Bryn Mawr, PA 19010. Applicant's representative: H. Richard Stickel (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement* (portland and masonry, in bulk, in package) from York, Pa., to points in Kentucky, North Carolina, Tennessee, and West Virginia, for 150 days. Supporting shipper: Medusa Portland Cement Co., Post Office Box 5668, Cleveland, OH 44101. Send protests to: Ross A. Davis, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1518 Walnut Street, Room 1600, Philadelphia, PA 19102.

No. MC 125035 (Sub-No. 23 TA), filed December 2, 1971. Applicant: RAY E. BROWN TRUCKING, INC., Post Office Box 84, Massillon, OH 44646. Applicant's representative: Fred H. Zollinger, 800 Cleve-Tusc. Building, Canton, OH 44702. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Ice cream, ice cream confections, ice confections, and ice water confections*, from Wheeling, W. Va., to Paterson, N.J., for 90 days. Supporting shipper: The Ziegenfelder Co., Inc., 87 18th Street, Wheeling, WV 26003. Send protests to: Frank L. Calvary, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 255 Federal Building and U.S. Courthouse, 85 Marconi Boulevard, Columbus, OH 43215.

No. MC 135874 (Sub-No. 2 TA), filed December 3, 1971. Applicant: LTL PERISHABLES, INC., 120 Main Street, Lamoni, IA 50140. Applicant's representative: Donald L. Stern, 530 Univac Building, 7100 West Center Road, Omaha, NE 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, dairy products, and articles distributed by meat packinghouses*, as described in Appendix 1 to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from Dubuque, Iowa, to Omaha, Nebr., for 180 days. Supporting shipper: Skylark Meats, Inc., 1117 South 119th Street, Omaha, NE 68144. Send protests to: Ellis L. Annett, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 677 Federal Building, Des Moines, IA 50309.

No. MC 135974 (Sub-No. 2 TA), filed December 3, 1971. Applicant: DONALD W. LEMMONS, doing business as INTERSTATE WOOD PRODUCTS, 107 Johnson Lane, Kelso, WA 98626. Applicant's representative: Donald W. Lemmons (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wood residuals*, from the U.S. Plywood Mill at Neal Creek, Hood River County, Oreg., to Longview, Wash., for 180 days. Supporting shipper: U.S. Plywood, Oregon Division, Post Office Box 672, Eugene, OR 97401. Send protests to: District Supervisor W. J. Huetig, Interstate Commerce Commission, Bureau of Operations, 450 Multnomah Building, 319 Southwest Pine Street, Portland, OR 97204.

No. MC 136159 (Sub-No. 1 TA), filed November 30, 1971. Applicant: AVIS HIGGINS, doing business as A.B.S. MOVERS, 824 Valley View Drive, Richland Center, WI 53581. Applicant's representative: Michael J. Wyngaard, 125 West Doty Street, Madison, WI 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Signs, signpole parts and accessories*, from Pardeeville, Wis., to points in the United States (except Alaska and Hawaii); and (2) *used signs, signpoles and parts and materials, equipment and supplies* which are used in the manufacture, sale, production and distribution of the commodities named in part 1 from points in Indiana, Ohio, Florida, Georgia, Mississippi, Alabama, Louisiana, South Carolina, Virginia, Kentucky, and Tennessee, for 180 days. Supporting shipper: General Indicator Corp., 413 South Main Street, Pardeeville, WI 53954. Send protests to: Barney L. Hardin, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 139 West Wilson Street, Room 206, Madison, WI 53703.

No. MC 136163 (Sub-No. 1 TA), filed December 2, 1971. Applicant: JEROME KELLY, JR., doing business as JEROME KELLY & SON, 2025 East Chase Street, Baltimore, MD 21213. Applicant's representative: Jules E. Bernard III, 2000 K Street NW., Washington, DC 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, from Baltimore, Md., to points in Maryland, Delaware, Pennsylvania, Indiana, Illinois, Michigan, New Jersey, Massachusetts, Rhode Island, Connecticut, Ohio, West Virginia, North Carolina, South Carolina, Florida, Tennessee, Alabama, Mississippi, Louisiana, Kentucky, Virginia, Georgia, New York, and Washington, D.C., and return for 180 days. Supported by: There are approximately 25 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: William L. Hughes, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 814-B Federal Building, Baltimore, Md. 21201.

No. MC 136200 TA, filed December 2, 1971. Applicant: ACE VAN & STORAGE COMPANY, 170 Sixth Avenue, San Diego, CA 92101. Applicant's representative: Alan F. Wohlstetter, 1700 K Street NW., Washington, DC 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods*, between points in San Diego County, Calif., restricted to the transportation of traffic having a prior or subsequent movement, in containers, and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization or unpacking, uncrating, and decontainerization of such traffic, for 180 days. Supporting shippers: Continental Forwarders, Inc., 105 Leonard Street, New York, NY 10013; Sunpak International Movers, 534 Westlake Avenue North, Seattle, WA 98109. Send protests to: District Supervisor Philip Yallowitz, Interstate Commerce Commission, Bureau of Operations, Room 7708, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

No. MC 136201 TA, filed December 2, 1971. Applicant: ROCKY MOUNTAIN FEED INGREDIENTS SERVICE, INC., 1430 Highway 87, Billings, MT 59101. Applicant's representative: Hugh Sweeney, Suite 301, Mutual Benefit Life Building, Box 1321, Billings, MT 59103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Liquid animal feed*, in bulk, from Billings, Mont., to points in North Dakota on or west of North Dakota Highway 83; (2) *liquid animal feed*, in bulk, in tank vehicles, from Billings, Mont., to points in Wyoming; (3) *animal feeds*, in bulk, from Edgeley, N. Dak., to points on or north of U.S. Highway 14 in South Dakota; (4) *dry animal feeds*, in bulk, from Great Falls, Mont., to points in Idaho on or north of Highway 12; (5) *molasses and beet pulp*, in bulk, from the origin points of Worland, Lovell, and Torrington, Wyo., to points in Montana; and (6) *liquid molasses*, in bulk, in tank vehicles, from Seattle, Wash., to Great Falls, Mont., for 180 days. Supporting shipper: Grain Terminal Association,

Feed Division, Great Falls, Mont. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 251, U.S. Post Office Building, Billings, Mont. 59101.

No. MC 136202 TA, filed December 2, 1971. Applicant: B. D. GREEK AND ANNA L. CARDWELL, doing business as, REBEL VAN LINES, 2945 West Columbia, Torrance, CA 90503. Applicant's representative: Alan F. Wohlstetter, 17 K Street NW., Washington, DC 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods*, between points in Los Angeles, Orange, San Diego, Riverside, Imperial, San Bernardino, Kern, Ventura, Santa Barbara, Monterey, San Luis Obispo, San Bruno, Santa Cruz, Santa Clara, San Mateo, Alameda, Contra Costa, Marin, and San Francisco Counties, Calif., restricted to the transportation of traffic having a prior or subsequent movement in containers, and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization or unpacking, uncrating, and decontainerization of such traffic, for 180 days. Supporting shippers: Delcher Intercontinental Moving Service, 262 Riverside Avenue, Jacksonville, FL 32201; Four Winds Forwarding Inc., 7715 Convoy Court, San Diego, CA 92112; Sunpak International Movers, 534 Westlake Avenue North, Seattle, WA 98109. Send protests to: District Supervisor Philip Yallowitz, Interstate Commerce Commisison, Bureau of Operations, Room 7708, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

No. MC 136203 TA, filed December 2, 1971. Applicant: ARTHUR D. KINMAN, doing business as KINMAN RENTALS, 3219 North Highway 101, Lincoln City, OR 97367. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Mobile homes and sectionized buildings*, also referred to as module buildings, between points in Lincoln and Tillamook Counties, Oreg., and points in Washington, Idaho, and California, for 180 days. Supporting shippers: Coast Chrysler Center, 604 Main Avenue, Post Office Box 207, South Beach, OR; Building Service, Inc., Post Office Box 506, Lincoln City, OR; Flip's Mobile Homes, North Highway 101 and 13th, Lincoln City, OR 97367; Shore Line Mobile Homes, Inc., 2200 North Pacific Highway, Post Office Box 930, Newport, OR 97365. Send protests to: A. E. Odoms, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 450 Multnomah Building, Portland, OR 97204.

No. MC 136204 TA, filed December 2, 1971. Applicant: MERCHANT'S HOME DELIVERY SERVICE, INC., 210 G Saint Mary's Drive, Oxnard, CA 93030. Applicant's representative: Joseph E. Rebman, 1230 Boatmen's Bank Building, St. Louis, MO 63102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, crated and uncrated, in interstate or foreign commerce for the account of Levitz Furniture Co., from St. Louis County, Mo., to points in Illinois, on and south of U.S. Highway 24 to junction U.S. Highway 136, thence to junction U.S. Highway 51, and on and west of U.S. Highway 51 to junction Illinois Highway 146, thence on and north of Illinois Highway 146 to the Illinois-Missouri State line, for 150 days. Supporting shipper: Levitz Furniture Co., 9124 Pershall Road, Hazelwood, St. Louis County, MO 63042. Send protests to: Walter W. Strakosch, District Supervisor, Interstate Commerce Comission, Bureau of Operations, Room 7708 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-18260 Filed 12-13-71;8:49 am]

[Notice 794]

MOTOR CARRIER TRANSFER PROCEEDINGS

DECEMBER 9, 1971.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-73174. By order of December 7, 1971, the Motor Carrier Board approved the transfer to certificate of registration No. MC-121097 (Sub-No. 1), to Harold Shifflet and Ralph Norman Woodmansee, doing business as East Idaho Transfer, Post Office Box 777, Idaho Falls, ID, covering the transportation of: General commodities, with exceptions, solely within the State of Idaho, which evidentiary rights were initially authorized to Red W. Carter and Madge C. Smith, doing business as Idaho Falls Transfer & Storage Co., Post Office Box 777, Idaho Falls, ID.

No. MC-FC-73191. By order of December 7, 1971, the Motor Carrier Board approved the transfer to Cox Grain & Feed Co., a corporation, Tennant, Iowa, of certificate No. MC-51269, issued March 30, 1949, to Bernard K. Cox, doing business as Cox Grain & Feed Co., Tennant, Iowa, authorizing the transportation of livestock between Tennant, Iowa, and points and places within 15 miles of Tennant, on the one hand, and, on the other, Omaha, Nebr., and general commodities, with the usual exceptions, from Omaha, Nebr., to Tennant, Iowa, and points and places within 15 miles of Tennant. Bernard Keith Cox, president, Cox Grain & Feed Co., Tennant, Iowa 51574, representative for applicants.

No. MC-FC-73307. By order of December 6, 1971, the Motor Carrier Board approved the transfer to Wilford Kallmeyer & Joy Kallmeyer, doing business as Kallmeyer Bros., Hermann, Mo., of permit No. MC-124846, issued July 5, 1963, to James J. Van Booven (Bertha R. Van Booven, Administratrix), Rhineland, Mo., authorizing the transportation of malt beverages in containers, from Belleville, Ill., to Hermann, Mo., under a continuing contract or contracts with Marvin Scheidegger, doing business as Marvin's Distributing Co., of Hermann, Mo. Wilford Kallmeyer, Post Office Box 223, Hermann, Mo. 65041, representative for applicants.

No. MC-FC-73313. By order of December 7, 1971, the Motor Carrier Board approved the transfer to Walker O. Duvall, Madison, Mo., of the operating rights in certificate No. MC-40063 issued June 4, 1968, to Del Miles Truck Line, Inc., Madison, Mo., authorizing the transportation of general commodities, with usual exceptions, between Madison, Mo., and National Stock Yards, Ill., serving the intermediate and off-route points of East St. Louis, Ill., St. Louis, Mo., and points in that part of Monroe County, Mo., west of Missouri Highway 15; and household goods, between points in Monroe County, Mo., on the one hand, and, on the other, points in Illinois. Herman W. Huber, 101 East High Street, Jefferson City, MO 65101, attorney for applicants.

No. MC-FC-73316. By order of December 7, 1971, the Motor Carrier Board approved the acquisition by Donald Ray Absher and Avelina L. Presley, of Urbana, Ill., of control of Parkhill's Tours, Inc., Champaign, Ill., which holds License No. MC-75001 issued October 22, 1940, authorizing operations as a broker at Champaign, Ill., in connection with the transportation of passengers between points and places in Illinois, on the one hand, and, on the other, points and places in the United States. Harry J. Harman, 1 Indiana Square, Suite 2425, Indianapolis, IN 46204, attorney for applicants.

No. MC-FC-73324. By order of December 6, 1971, the Motor Carrier Board approved the transfer to Roy G. Hayes, doing business as Crowley County Transportation, Pueblo, Colo., of the operating rights in certificate No. MC-83884 issued December 8, 1966, to Charles McGhee, doing business as T & W Truck Line, Olney Springs, Colo., authorizing the transportation of general commodities, with exceptions, between Pueblo and Sugar City, Colo., serving named intermediate points. Robert S. Stauffer, 3539 Boston Road, Cheyenne, WY 82001, attorney for applicants.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-18261 Filed 12-13-71;8:49 am]

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federal register

TUESDAY, DECEMBER 14, 1971
WASHINGTON, D.C.
Volume 36 ■ Number 240

PART II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

■

COAL MINE HEALTH AND SAFETY

Regulations Relating to Black Lung Benefits

Title 20—EMPLOYEES' BENEFITS

Chapter III—Social Security Administration, Department of Health, Education, and Welfare

[Regs. No. 10, further amended]

PART 410—FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969, TITLE IV—BLACK LUNG BENEFITS (1969 ——)

Miscellaneous Amendments to Chapter

On March 4, 1971, there was published in the FEDERAL REGISTER (36 F.R. 4340) a notice of proposed rule making with proposed new Subparts B, C, E, and F of Regulations No. 10 of the Social Security Administration, 20 CFR Part 410, and proposed amendments to Subpart A thereof. After consideration of all comments submitted by interested parties, those subparts and amendments as proposed are hereby adopted, subject to the following changes:

1. Paragraphs 410.201(d) and 410.210 (d) are omitted, paragraph 410.215(a) is revised, paragraphs 410.215 (c), (d), and (e) are added and paragraphs 410.210 (e) and (f) as proposed are redesignated 410.210 (d) and (e). Before revision, § 410.215 would have required a claimant to file a claim under the applicable State workmen's compensation law (unless futile to do so) prior to or at the same time his claim for benefits under this part is filed. Sections 410.201(d) and 410.210 (d) would have made the filing of such State claim a condition of entitlement to benefits for miners and widows so that no benefits could be paid for months prior to the month in which the State claim was filed. New § 410.215(d), however, provides instead that such State claim, when filed within 30 days of the date the Administration mails the claimant notice to do so, will be considered to have been filed timely. This is consistent with the general approach to evidence of eligibility (see, for example, § 410.240(a)) and is considered a more fair and practical interpretation of the statute. In addition, new paragraph 410.215(e) states that in the absence of the filing of such a State claim, the Administration may, in a proper case, disallow a claim for benefits.

2. Since these regulations become effective in 30 days, there is no reason for an effective date more than a month later in § 410.234 and that section has been revised accordingly.

3. A new § 410.240(h) has been added to state the provisions of the statute and the policy of the Administration with respect to requests for reimbursement of medical expenses reasonably incurred in establishing claims; in addition, § 410.610(j) has been added to provide for a hearing where requests for reimbursement are denied and the amount in controversy is $100 or more; and conforming changes are made in § 410.615(e).

4. Section 410.215(c) has been added, and paragraph 410.610(h) has been revised, to indicate that the statutory requirement of filing a claim under the applicable State workmen's compensation law necessarily implies a requirement to prosecute such a State claim diligently.

5. Section 410.221(c) is added to include a cross-reference.

6. Section 410.240(c) has been amended to clarify the responsibilities of claimants to report events which could effect payments.

7. Section 410.631 has been revised to permit the date of mailing of the notice of reconsidered determination, or a date not more than 30 days thereafter, to be used as the effective date of such notice.

8. Minor editorial changes are made in §§ 410.101(a), 410.300(c), 410.370(e)(4), and 410.395(c).

Effective date. These regulations as set forth below, shall be effective 30 days after their publication in the FEDERAL REGISTER, *Provided,* That with respect to claims pending on such effective date, the following provisions shall be applied prospectively only as if, with respect to such following provisions, the effective date of these regulations were the date the claim for benefits under this part were filed: Sections 410.215 (c), (d), and (e), and § 410.610(h).

Dated: October 26, 1971.

ROBERT M. BALL,
Commissioner of Social Security.

Approved: December 7, 1971.

ELLIOT L. RICHARDSON,
Secretary of Health, Education, and Welfare.

Part 410 of Chapter III, Title 20, is amended as follows:

Subpart A—Introduction, General Provisions, and Definitions

1. The authority citation for Part 410 is deleted and a new authority citation for Subpart A is inserted as follows:

AUTHORITY: The provisions of this Subpart A issued under secs. 3 (g) and (h), 402, 411, 412, 413, 414, 426(a), and 508, 83 Stat. 744; 30 U.S.C. 802 (g) and (h), 902, 921–924, 936(a), and 957. Sec. 410.120 also issued under sec. 1106, 53 Stat. 1398, as amended, 42 U.S.C. 1306.

2. Section 410.101 is revised to read as follows:

§ 410.101 Introduction.

The regulations in this Part 410 (Regulations No. 10 of the Social Security Administration), relate to the provisions of Part B (Black Lung Benefits) of title IV of the Federal Coal Mine Health and Safety Act of 1969, as enacted December 30, 1969, and as may hereafter be amended. The regulations in this part are divided into the following subparts according to subject content:

(a) This Subpart A contains this introduction, general provisions, and provisions relating to definitions and the use of terms.

(b) Subpart B of this part relates to the requirements for entitlement, duration of entitlement, filing of claims, and evidence.

(c) Subpart C of this part describes the relationship and dependency requirements for widows and relationship and dependency requirements which affect the benefit amounts of entitled miners and widows.

(d) Subpart D of this part provides standards for determining total disability and death due to pneumoconiosis.

(e) Subpart E of this part relates to payment of benefits, payment periods, benefit rates and their modification, and overpayments and underpayments.

(f) Subpart F of this part relates to determinations of disability and other determinations, the procedures for administrative review, finality of decisions, and the representation of parties.

3. A new paragraph (r) is added to § 410.110 to read as follows:

§ 410.110 General definitions and use of terms.

* * * * *

(r) "Beneficiary" means a miner or surviving widow of a miner entitled to a benefit as defined in paragraph (b) of this section.

4. A new § 410.120 is added to read as follows:

§ 410.120 Disclosure of program information.

Disclosure of any file, record, report, or other paper, or any information obtained at any time by the Department of Health, Education, and Welfare, or any officer or employee of that Department, or any person, agency, or organization with whom the Administration has entered into an agreement to perform certain functions in the Administration of title IV of the Act, which in any way relates to, or is necessary to, or is used in, or in connection with, the administration of such title, shall be made in accordance with the regulations of the Department contained in 45 CFR Part 5, except that any such file, record, report, or other paper or information obtained in connection with the administration of the old-age, survivors, disability, or health insurance programs pursuant to titles II and XVIII of the Social Security Act, shall be disclosed only in accordance with Regulation No. 1 of the Social Security Administration, Part 401 of this chapter.

5. New Subparts B and C are added to Part 410 of Chapter III to read as follows:

Subpart B—Requirements for Entitlement; Duration of Entitlement; Filing of Claims; and Evidence

Sec.

AUTHORITY: The provisions of this Subpart B issued under secs. 402, 411, 412, 413, 414, 426(a), and 508, 83 Stat. 792; 30 U.S.C. 902, 921-924, 936(a), and 957.

Subpart B—Requirements for Entitlement; Duration of Entitlement; Filing of Claims; and Evidence

§ 410.200 Types of benefits; general.

Part B of title IV of the Act provides for the payment of periodic benefits to a miner who is determined to be totally disabled due to pneumoconiosis, or to the widow of a miner who was entitled to benefits at the time of his death or whose death is determined to have been due to pneumoconiosis. The following sections of this subpart set out the conditions of entitlement to benefits for a miner or a widow; describe the events which terminate or preclude entitlement to benefits and the procedures for filing a claim; and prescribe certain requirements as to evidence. Also see Subpart C of this part for regulations relating to the relationship and dependency requirements applicable to claimants for benefits as a widow and to beneficiaries with dependents.

§ 410.201 Conditions of entitlement; miner.

An individual is entitled to benefits if such individual:

(a) Is a miner (see § 410.110(j)); and

(b) Is totally disabled due to pneumoconiosis (see Subpart D of this part); and

(c) Has filed a claim for benefits in accordance with the provisions of §§ 410.220–410.227.

§ 410.202 Duration of entitlement; miner.

(a) An individual is entitled to benefits as a miner for each month beginning with the first month in which all of the conditions of entitlement prescribed in § 410.201 are satisfied.

(b) The last month for which such individual is entitled to such benefit is the month before the month in which either of the following events first occurs:

(1) The miner dies (see, however, § 410.226); or

(2) The miner's disability ceases.

(c) A miner's entitlement to benefits under Part B of Title IV of the Act which is based on a claim which is filed (see § 410.227) after December 31, 1971, and before January 1, 1973, shall terminate on December 31, 1972, unless sooner terminated under paragraph (b) of this section.

§ 410.210 Conditions of entitlement; widow.

An individual is entitled to benefits if such individual:

(a) Is the widow (see § 410.320) of a miner (see § 410.110(j));

(b) Has not remarried since the miner's death;

(c) Has filed a claim for benefits in accordance with the provisions of §§ 410.220–410.227;

(d) Was dependent on the miner at the pertinent time (see § 410.360); and

(e) The deceased miner either:

(1) Was entitled to benefits at the time of his death; or

(2) Died before January 1, 1973, and his death is determined to have been due to pneumoconiosis (see Subpart D of this part).

§ 410.211 Duration of entitlement; widow.

(a) An individual is entitled to benefits as a widow for each month beginning with the first month in which all of the conditions of entitlement prescribed in § 410.210 are satisfied.

(b) The last month for which such individual is entitled to such benefit is the month before the month in which either of the following events first occurs:

(1) The widow remarries; or

(2) The widow dies.

(c) Any remarriage of a widow after the miner's death whether or not such remarriage is later ended precludes her entitlement to benefits as a widow or, if such remarriage occurs after her entitlement, terminates such entitlement.

§ 410.215 Filing claim under State workmen's compensation law; when filing such claim shall be considered futile.

(a) A claimant for benefits under this part must file a claim under the applicable State workmen's compensation law prior to a final decision on his claim for benefits under this part (see § 410.227(c)) except where the filing of a claim under such applicable State workmen's compensation law would clearly be futile.

(b) The Administration shall determine that the filing of such a claim would clearly be futile when:

(1) The period within which such a claim may be filed under such law has expired; or

(2) Pneumoconiosis as defined in § 410.110(o) is not compensable under such law; or

(3) The maximum amount of compensation or the maximum number of compensation payments allowable under such law has already been paid; or

(4) The claimant does not meet one or more conditions of eligibility for workmen's compensation payments under applicable State law; or

(5) In any other situation the claimant establishes to the satisfaction of the Administration that the filing of a claim on account of pneumoconiosis would result as a matter of law in a denial of his claim for compensation under such law.

(c) To be considered to have compiled with the statutory requirement for filing a claim under the applicable State workmen's compensation law, a claimant for benefits under this part must diligently prosecute such State claim.

(d) Where, but for the failure to file a claim under the applicable State workmen's compensation law, an individual's claim for benefits under this part would be allowed, the Administration shall notify the individual in writing of the need to file such State claim as a prerequisite to such allowance. Such claim, when filed within 30 days of the date such notice is mailed to the individual, will be considered to have been filed timely.

(e) Where, on the other hand, a claim has not been filed under the applicable State workmen's compensation law, and the Administration determines that a claim for benefits under this part would be disallowed even if such a State claim were filed, the Administration shall make such determination as may be necessary for the adjudication of the individual's claim for benefits under this part pursuant to § 410.610.

§ 410.220 Claim for benefits; definitions.

For purposes of this part:

(a) *Claim defined.* The term "claim" means a writing asserting a right to benefits by an individual, or by a proper party on his behalf as defined in § 410.222, which writing is filed with the Administration in accordance with the regulations in this subpart.

(b) *Application defined.* The term "application" refers only to a writing on a form prescribed in § 410.221.

(c) *Claimant defined.* The term "claimant" refers to the individual who has filed a claim for benefits on his own behalf, or on whose behalf a proper party as defined in § 410.222 has filed a claim.

(d) *Applicant defined.* The term "applicant" refers to the individual who has filed an application on his own behalf, or on behalf of another, for benefits.

(e) *Execution of claim defined.* The term "to execute a claim" means to complete and sign an application (but, for an exception, see § 410.234). Irrespective of who may have prepared or completed the application, it is considered to have been executed by or on behalf of the claimant when it is signed by him or by an individual authorized to do so on his behalf (see § 410.222).

§ 410.221 Prescribed application forms.

(a) Claims shall be made as provided in this subpart on such application forms

and in accordance with such instructions (provided thereon or attached thereto) as are prescribed by the Administration.

(b) The application forms used by the public to file claims for benefits under part B of title IV of the Act are SSA–46 (Application for Benefits Under the Federal Coal Mine Health and Safety Act of 1969 (Coal Miner's Claim of Total Disability)) and SSA–47 (Application for Benefits Under the Federal Coal Mine Health and Safety Act of 1969 (Widow's Claim)).

(c) For further information about some of the forms used in the administration of part B of title IV of the Act, see §§ 422.505(b), 422.515, 422.525, and 422.527 of this chapter.

§ 410.222 Execution of a claim.

The Administration determines who is the proper party to execute a claim in accordance with the following rules:

(a) If the claimant is mentally competent, and is physically able to execute the claim, the claim shall be executed by him.

(b) If the claimant has a legally appointed guardian, committee, or other representative, the claim may be executed by such guardian, committee, or other representative.

(c) If the claimant is mentally incompetent or is physically unable to execute the claim, it may be executed by the person who has the claimant in his care.

(d) Where the claimant is in the care of an institution and is not mentally competent or physically able to execute a claim, the manager or principal officer of such institution may execute the claim.

(e) For good cause shown, the Administration may accept a claim executed by a person other than one described in paragraph (b), (c), or (d) of this section.

§ 410.223 Evidence of authority to execute a claim on behalf of another.

Where the claim is executed by a person other than the claimant, such person shall, at the time of filing the claim or within a reasonable time thereafter, file evidence of his authority to execute the claim on behalf of such claimant in accordance with the following rules:

(a) If the person executing the claim is the legally appointed guardian, committee, or other legal representative of such claimant, the evidence shall be a certificate executed by the proper official of the court of appointment.

(b) If the person executing the claim is not such a legal representative, the evidence shall be a statement describing his relationship to the claimant, the extent to which he has the care of such claimant, or his position as an officer of the institution of which the claimant is an inmate. The Administration may, at any time, require additional evidence to establish the authority of any such person.

§ 410.224 Claimant must be alive when claim is filed.

For a claim to be effective, the claimant must be alive at the time a properly executed claim (see § 410.222) is filed with the Administration (see § 410.227). (See §§ 410.229 and 410.230 concerning the filing of a prescribed application form after submittal of a written statement.)

§ 410.226 Application effective for entire month of filing.

Benefits are payable for full calendar months. If the claimant meets all the requirements for entitlement to benefits in the same calendar month in which his application is filed, the application will be effective for the whole month. If a miner dies in the first month for which he meets all the requirements for entitlement to benefits, he will, notwithstanding the provisions of § 410.202(b), be considered to be entitled to benefits for that month.

§ 410.227 When a claim is considered to have been filed; time and place of filing.

(a) *Date of receipt.* Except as otherwise provided in this part, a claim is considered to have been filed only as of the date it is received at an office of the Administration or by an employee of the Administration who is authorized to receive such claims.

(b) *Date of mailing.* If the claim is deposited in and transmitted by the U.S. mail and the fixing of the date of delivery as the date of filing would result in a loss or impairment of benefit rights, it will be considered to have been filed as of the date of mailing. The date appearing on the postmark (when available and legible) shall be prima facie evidence of the date of mailing. If there is no postmark or it is not legible, other evidence may be used to establish the mailing date.

(c) *Prospective filing of a claim.* A claim which is filed before the first month in which the claimant meets the requirements for entitlement to benefits is a valid claim only if the claimant meets such requirements before a final decision on his claim is made. Such a claim is deemed to have been filed on the first day such requirements are met.

§ 410.228 Requests and notices to be in writing.

Except as otherwise provided in this part, any request to the Administration for a determination or a decision relating to a person's right to benefits, the withdrawal of a claim, the cancellation of a request for such withdrawal, or any notice provided for pursuant to the regulations in this Part 410, shall be in writing and shall be signed by the person authorized to execute a claim under § 410.222.

§ 410.229 When written statement is considered a claim; general.

(a) *Written statement filed by claimant on his own behalf.* Where an individual files a written statement with the Administration (see § 410.227) which indicates an intention to claim benefits, and such statement bears his signature or his mark properly witnessed, the filing of such written statement, unless otherwise indicated by the regulations in this part, shall be considered to be the filing of a claim for benefits: *Provided,* That:

(1) The claimant or a proper party on his behalf (see § 410.222) executes a prescribed application form (see § 410.221) that is filed with the Administration during the claimant's lifetime and within the period prescribed in paragraph (c)(1) of this section; or

(2) In the case of a claimant who dies prior to the filing of such prescribed application form within the period prescribed in paragraph (c)(1) of this section, a prescribed application form is filed with the Administration within the period precribed in paragraph (c)(2) of this section by a party acting on behalf of the deceased claimant's estate.

(b) *Written statement filed by individual on behalf of another.* A written statement filed by an individual which indicates an intention to claim benefits on behalf of another person shall, unless otherwise indicated thereon, be considered to be the filing of a claim for such purposes: *Provided,* That:

(1) The written statement bears the signature (or mark properly witnessed) of the individual filing the statement; and

(2) The individual filing the statement is the spouse of the claimant on whose behalf the statement is being filed, or a proper party to execute a claim on behalf of a claimant as determined by § 410.222; and

(3) A prescribed application form (see § 410.221) is executed and filed in accordance with the provisions of paragraph (a) (1) or (2) of this section.

(c) *Period within which prescribed application form must be filed.* After the Administration has received from an individual a written statement as described in paragraph (a) or (b) of this section:

(1) Notice in writing shall be sent to the claimant or to the individual who submitted the written statement on his behalf, stating that an initial determination will be made with respect to such written statement if a prescribed application form executed by the claimant or by a proper party on his behalf (see § 410.222), is filed with the Administration within 6 months from the date of such notice; or

(2) If the Administration is notified that the death of such claimant occurred before the mailing of the notice described in subparagraph (1) of this paragraph, or within the 6-month period following the mailing of such notice but before the filing of a prescribed application form by or on behalf of such individual, notification in writing shall be sent to a person acting on behalf of his estate, or to the deceased's last known address. Such notification will include information that an initial determination with respect to such written statement will be made only if a prescribed application form is filed within 6 months from the date of such notification.

(3) If, after the notice as described in this paragraph (c) has been sent, a prescribed application form is not filed (in accordance with the provisions of paragraph (a) or (b) of this section) within

the applicable period prescribed in subparagraph (1) or (2) of this paragraph, it will be deemed that the filing of the written statement to which such notice refers is not to be considered the filing of a claim for the purposes set forth in paragraphs (a) and (b) of this section.

§ 410.230 Written statement filed by or for a miner on behalf of a member of his family.

Notwithstanding the provisions of § 410.229, the Administration will take no action with respect to a written statement filed by or for a miner on behalf of a member of his family until such miner's death. At such time, the provisions of § 410.229 shall apply as if such miner's claim on behalf of a member of his family had been filed on the day of the miner's death.

§ 410.231 Time limits for filing claims.

(a) A claim by or on behalf of a miner must be filed on or before December 31, 1972, and when so filed, is a claim for benefits under part B of title IV of the Act. (See § 410.227 for when a claim is considered to have been filed. See also § 410.202(c) for the duration of entitlement to benefits of a miner based on a claim for such benefits which is filed after December 31, 1971, and before January 1, 1973.)

(b) In the case of a miner who was entitled to benefits for the month before the month of his death, or died in the first month for which he met all the requirements for entitlement (see § 410.226), a claim for benefits by or on behalf of the widow of such miner must be filed by December 31, 1972, or within 6 months after the miner's death, whichever is later. When so filed, it constitutes a claim for benefits under part B of title IV of the Act.

(c) In the case of a miner who was not entitled to benefits for the month before the month of his death, and whose death occurred prior to January 1, 1973, a claim for widow's benefits by or on behalf of the widow of such miner must be filed by December 31, 1972, or, in the case of the death of a miner occurring after June 30, 1972, and before January 1, 1973, within 6 months of such miner's death. When so filed, it constitutes a claim for benefits under part B of title IV of the Act.

§ 410.232 Withdrawal of a claim.

(a) *Before adjudication of claim.* A claimant (or an individual who is authorized to execute a claim on his behalf under § 410.222), may withdraw his previously filed claim provided that:

(1) He files a written request for withdrawal,

(2) The claimant is alive at the time the request for withdrawal is filed,

(3) The Administration approves the request for withdrawal, and

(4) The request for withdrawal is filed on or before the date the Administration makes a determination on the claim.

(b) *After adjudication of claim.* A claim for benefits may be withdrawn by a written request filed after the date the Administration makes a determination on the claim provided that:

(1) The conditions enumerated in paragraph (a) (1) through (3) of this section are met; and

(2) There is repayment of the amount of benefits previously paid because of the claim that is being withdrawn or it can be established to the satisfaction of the Administration that repayment of any such amount is assured.

(c) *Effect of withdrawal of claim.* Where a request for withdrawal of a claim is filed and such request for withdrawal is approved by the Administration, such claim will be deemed not to have been filed. After the withdrawal (whether made before or after the date the Administration makes a determination) further action will be taken by the Administration only upon the filing of a new claim, except as provided in § 410.233.

§ 410.233 Cancellation of a request for withdrawal.

Before or after a written request for withdrawal has been approved by the Administration, the claimant (or a person who is authorized under § 410.222 to execute a claim on his behalf) may request that the "request for withdrawal" be canceled and that the withdrawn claim be reinstated. Such request for cancellation must be in writing and must be filed, in a case where the requested withdrawal was approved by the Administration, no later than 60 days after such approval. The claimant must be alive at the time the request for cancellation of the "request for withdrawal" is filed with the Administration.

§ 410.234 Interim provision for claims not filed on a prescribed form.

Notwithstanding any other provision of this subpart, a written request for benefits which is filed before the end of the calendar month in which the effective date of this section occurs, and which meets the requirements of this subpart except for the filing of a prescribed application form, shall be considered a claim for benefits. Nevertheless, where a prescribed application form has not been filed, the Administration may require that such a form be completed and filed before adjudicating the claim. (See § 410.240(a).)

§ 410.240 Evidence.

(a) *Evidence of eligibility.* A claimant for benefits shall submit such evidence of eligibility as is specified in this section. The Administration may at any time require additional evidence to be submitted with regard to entitlement or the right to receive payment.

(b) *Failure to submit requested evidence of eligibility.* Whenever a claimant for benefits has submitted no evidence or insufficient evidence of eligibility, the Administration will inform the claimant what evidence is necessary for a determination of eligibility and will request him to submit such evidence within a specified time. The claimant's failure to submit evidence as requested by the Administration shall be a basis for determining that the conditions of eligibility concerning which such evidence was requested have not been met (see § 410.610(g)).

(c) *Reports by beneficiary; evidence of nonoccurrence of termination, suspension, or reduction event.* Any individual entitled to a benefit who is aware of any circumstance which, under the provisions of this part could affect his entitlement to benefits, his eligibility for payment, or the amount of his benefit, or result in the termination, suspension, or reduction of his benefit, shall promptly report such circumstance to the Administration. The Administration may at any time require an individual receiving, or claiming that he is entitled to receive, a benefit, either on behalf of himself or on behalf of another, to submit a written statement giving pertinent information bearing upon the issue of whether or not an event has occurred which would cause such benefit to be terminated, or which would subject such benefit to reductions or suspension under the provisions of the Act. The failure on the part of such individual to submit any such report or statement, properly executed, to the Administration, shall subject such benefit to reductions, suspension, or termination, as the case may be.

(d) *Place and manner of submitting evidence.* Evidence in support of a claim shall be filed at an office of the Administration or with an employee of the Administration authorized to receive such evidence at a place other than such office. Such evidence may be submitted as part of a prescribed application form if the form provides for its inclusion, or it may be submitted in addition to such prescribed form and in the manner indicated in this section.

(e) *Certification of evidence by authorized individual.* In cases where a copy of a record, document, or other evidence, or an excerpt of information therefrom, is acceptable as evidence in lieu of the original, such copy or excerpt shall, except as may otherwise clearly be indicated thereon, be certified as a true and exact copy or excerpt by the official custodian of any such record or by an employee of the Administration authorized to make certifications of any such evidence.

(f) *Evidence of total disability or death due to pneumoconiosis.* For evidence requirements to support allegations of total disability or death due to pneumoconiosis; for the effect of the failure or refusal of an individual to present himself for an examination or test in connection with the alleged disability, or to submit evidence of disability; and for evidence as to the cessation of disability, see Subpart D of this Part 410.

(g) *Evidence of matters other than total disability or death due to pneumoconiosis.* With respect to the following matters, evidence shall be submitted in accordance with the provisions of Regulations No. 4 (Part 404 of this chapter) cited hereinafter, as if the claim for benefits under the Act were an application for benefits under section 202 of the Social Security Act. Evidence as to:

(1) Age: § 404.703 of this chapter;
(2) Death: §§ 404.704, 404.705 of this chapter;
(3) Marriage and termination of marriage: §§ 404.706–404.709 of this chapter;
(4) Relationship of parent and child: §§ 404.711–404.715 of this chapter;
(5) Domicile: § 404.716 of this chapter;
(6) "Living with" or "member of the same household": § 404.716a of this chapter.

(h) *Reimbursement for reasonable expenses in obtaining medical evidence.* Claimants for benefits under this part shall be reimbursed for reasonable medical expenses incurred by them in establishing their claims. A medical expense generally is not "reasonable" when the medical evidence for which the expense was incurred is of no value in the adjudication of a claim. Medical evidence will be considered to be of "no value" when, for instance, it is only duplicative or when it is wholly extraneous to the medical issue of whether the claimant is disabled or died due to pneumoconiosis. In order to minimize inconvenience and expense to the claimant, he should not generally incur any medical expense for which he intends to claim reimbursement without first contacting the district office to determine what types of evidence not already available to the Administration may be useful in adjudicating his claim, what types of medical evidence may be reimbursable, and what would constitute a "reasonable medical expense" in a given case.

§ 410.250 Effect of conviction of felonious homicide on entitlement to benefits.

The widow of a miner who has been finally convicted by a court of competent jurisdiction of the felonious and intentional homicide of the miner shall not be entitled to benefits as a widow under part B of title IV of the Act.

Subpart C—Relationship and Dependency

AUTHORITY: The provisions of this Subpart C issued under secs. 402, 412(a), 426(a), and 508, 83 Stat. 792; 30 U.S.C. 902, 922(a), 936, and 957.

Subpart C—Relationship and Dependency

§ 410.300 Relationship and dependency; general.

(a) In order to establish entitlement to benefits, a widow must meet relationship and dependency requirements with respect to the miner prescribed by or pursuant to the Act.

(b) In order for a beneficiary to qualify for augmented benefits because of one or more dependents (see § 410.510 (b)), such dependents must meet relationship and dependency requirements with respect to such beneficiary prescribed by or pursuant to the Act.

(c) For purposes of this Part 410 "Employee" as used in 5 U.S.C. 8110(a) means a beneficiary, i.e., a miner with respect to miner's benefits and a widow with respect to widow's benefits (see § 410.110(r)).

§ 410.310 Determination of relationship; wife.

An individual will be considered to be the wife of a miner if:

(a) The courts of the State in which such miner is domiciled (see § 410.392) would find that such individual and the miner were validly married; or

(b) The courts of the State in which such miner is domiciled (see § 410.392) would find, under the law they would apply in determining the devolution of the miner's intestate personal property, that the individual is the miner's wife; or

(c) Under State law, such individual has the same right she would have if she were the wife to share in the miner's intestate personal property; or

(d) Such individual went through a marriage ceremony with the miner resulting in a purported marriage between them and which, but for a legal impediment (see § 410.391), would have been a valid marriage. However, such purported marriage shall not be considered a valid marriage if such individual entered into the purported marriage with knowledge that it was not a valid marriage.

§ 410.320 Determination of relationship; widow.

An individual will be considered to be the widow of a miner if:

(a) The courts of the State in which such miner was domiciled (see § 410.392) at the time of his death would find that the individual and the miner were validly married; or

(b) The courts of the State in which such miner was domiciled (see § 410.392) at the time of his death would find, under the law they would apply in determining the devolution of the miner's intestate personal property, that the individual was the miner's widow; or

(c) Under State law, such individual has the same right she would have as if she were the miner's widow to share in the miner's intestate personal property; or

(d) Such individual went through a marriage ceremony with the miner resulting in a purported marriage between them and which, but for a legal impediment (see § 410.391) would have been a valid marriage. However, such purported marriage shall not be considered a valid marriage if such individual entered into the purported marriage with knowledge that it was not a valid marriage.

§ 410.330 Determination of relationship; child.

An individual will be considered to be the child of a beneficiary (see § 410.110 (r)) if:

(a) The courts of the State in which such beneficiary is domiciled (see § 410.392) would find, under the law they would apply in determining the devolution of the beneficiary's intestate personal property, that the individual is the beneficiary's child; or

(b) Such individual is the legally adopted child of such beneficiary; or

(c) Such individual is the stepchild of such beneficiary by reason of a valid marriage of his parent or adopting parent to such beneficiary; or

(d) Such individual does not bear the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, but would, under State law, have the same right as a child to share in the beneficiary's intestate personal property; or

(e) Such individual is the natural son or daughter of a beneficiary but does not bear the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, and is not considered to be the child of the beneficiary under paragraph (d) of this section, such individual shall nevertheless be considered to be the child of such beneficiary if the beneficiary and the mother or the father, as the case may be, of such individual went through a marriage ceremony resulting in a purported marriage between them which, but for a legal impediment (see § 410.391), would have been a valid marriage.

(f) Such individual is the natural son or daughter of a beneficiary but does not have the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, and is not considered to be the child of the beneficiary under paragraph (d) or (e) of this section, such individual shall nevertheless be considered to be the child of such beneficiary if:

(1) Such beneficiary, prior to his entitlement to benefits, has acknowledged in writing that the individual is his son or daughter, or has been decreed by a court to be the father of the individual, or he has been ordered by a court to contribute to the support of the individual (see § 410.395(c)) because the individual is his son or daughter; or

(2) Such beneficiary is shown by satisfactory evidence to be the father of the individual and was living with or contributing to the support of the individual at the time such beneficiary became entitled to benefits.

(3) The term "beneficiary" as used in this paragraph, except where there is a specific reference to the "father" only, refers to the child's father (miner) or mother (widow).

§ 410.350 Determination of dependency; wife.

A wife will be determined to be dependent upon the miner if:

(a) She is a member of the same household as the miner (see § 410.393); or

(b) She is receiving regular contributions from the miner for her support (see § 410.395(b)); or

(c) The miner has been ordered by a court to contribute to her support (see § 410.395(c)).

§ 410.360 Determination of dependency; widow.

A widow will be determined to have been dependent upon the miner if, at the time of the miner's death:

(a) She was living with the miner (see §410.393); or

(b) She was dependent upon the miner for support or the miner has been ordered by a court to contribute to her support (see § 410.395); or

(c) She was living apart from the miner because of his desertion or other reasonable cause.

§ 410.370 Determination of dependency; child.

A child will be determined to be dependent upon the beneficiary if the child:

(a) Is unmarried; and

(b)(1) is living with such beneficiary (see § 410.394); or

(2) Is receiving regular contributions from such beneficiary toward his support (see § 410.395(b)); and

(c)(1) Is under 18 years of age; or

(2) Is 18 years of age or older and is incapable of self-support because of a physical or mental disability; or

(3) Is 18 years of age or older and a student.

(d) A child is "incapable of self-support because of a physical or mental disability" when he has an impairment (regardless of when it began) which would meet the disability requirements for child's insurance benefits based on such child's disability under section 202 (d) of the Social Security Act, 42 U.S.C. 402(d), which are applicable for months after August 1965. These disability requirements are prescribed in Subpart P of Part 404 of this chapter.

(e)(1) "Student" as used in this section means an individual under 23 years of age who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is:

(i) A school, college, or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof; or

(ii) A school, college, or university which has been accredited by a State or by a State-recognized or nationally-recognized accrediting agency or body; or

(iii) A school, college, or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited; or

(iv) A technical, trade, vocational, business, or professional school accredited or licensed by the Federal, or a State government or any political subdivision thereof, providing courses of not less than 3 months' duration that prepare the student for a livelihood in a trade, industry, vocation, or profession.

(2) A student will be considered to be "pursuing a full-time course of study or training at an institution" if he is enrolled in a noncorrespondence course and is carrying a subject load which is considered full-time for day students under the institution's standards and practices. However, a student will not be considered to be "pursuing a full-time course of study or training" if he is enrolled in a course of study or training of less than 13 school weeks' duration. A student beginning or ending a full-time course of study or training in part of any month will be considered to be pursuing such course for the entire month.

(3) A child is deemed not to have ceased to be a student:

(i) During any interim between school years, if the interim does not exceed 4 months and he shows to the satisfaction of the Administration that he has a bona fide intention of continuing to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim; or

(ii) During periods of reasonable duration during which, in the judgment of the Administration, he is prevented by factors beyond his control from pursuing his education.

(4) A student whose 23d birthday occurs during a semester or other enrollment period in which he is pursuing a full-time course of study or training shall continue to be considered a student for as long as he otherwise qualifies under this section until the end of such period.

§ 410.380 Time of determinations.

(a) *Relationship of widow.* The determination of a claimant's relationship as the widow of a miner is made with respect to the time such claimant effectively files (see § 410.227) a claim for benefits as a widow. A prior determination that such claimant was determined to be, or not to be, the wife of such miner, pursuant to § 410.310, for purposes of qualifying the miner for an augmentation of his benefits for a certain period on account of his dependents (see § 410.510(b)) is not determinative of the issue of the claimant's relationship as the widow of such miner.

(b) *Relationship and dependency of wife or child.* The determination as to whether an individual purporting to be a wife or child is related to or dependent upon the beneficiary shall be based on the facts and circumstances with respect to the period or periods of time as to which the issue of relationship or dependency of such purported wife or child is material. (See, for example, § 410.510(b).)

§ 410.391 Legal impediment.

For purposes of this Subpart C, "legal impediment" means an impediment resulting from the lack of dissolution of a previous marriage or otherwise arising out of such previous marriage or its dissolution, or resulting from a defect in the procedure followed in connection with the purported marriage ceremony—for example, the solemnization of a marriage only through a religious ceremony in a country which requires a civil ceremony for a valid marriage.

§ 410.392 Domicile.

(a) For purposes of this Subpart C, the term "domicile" means the place of an individual's true, fixed, and permanent home to which, whenever he is absent, he has the intention of returning.

(b) The domicile of a deceased miner is determined as of the time of his death.

(c) The domicile or a change in domicile of a beneficiary or other individual is determined with respect to the period or periods of time as to which the issue of domicile is material.

(d) If an individual was not domiciled in any State at the pertinent time, the law of the District of Columbia is applied as if such individual were then domiciled there.

§ 410.393 "Living with" and "member of the same household"; wife or widow.

(a) *Defined.* "Living with" as used in section 402(e) of the Act, and "member of the same household" as used in 5 U.S.C. 8110(a)(1)(A), mean that a husband and wife were customarily living together as husband and wife in the same place of abode.

(b) *Temporary absence.* The temporary absence of one spouse from such place of abode does not preclude a finding that one was "living with" the other or that they were "members of the same household." The absence of one spouse from the place of abode in which both had customarily lived as husband and wife shall, in the absence of evidence to the contrary, be considered temporary:

(1) If such absence was due to service in the Armed Forces of the United States; or

(2) If the period of absence from their place of abode did not exceed 6 months, and neither spouse was outside the United States, and the absence was due to business or employment reasons, or because of confinement in a penal institution or in a hospital, nursing home, or other curative institution; or

(3) In any other case, if the evidence establishes that despite such absence they nevertheless reasonably expected to resume physically living together at some time in the reasonably near future.

(c) *Death during absence.* Where the death of one of the parties occurred while away from the place of abode for treatment or care of an illness or an injury (e.g., in a hospital), the fact that the death was foreseen as possible or probable does not, in and of itself, preclude a finding that the parties were "living with" one another or were "member[s] of the same household" at the time of death.

(d) *Absences other than temporary.* In situations other than those described in paragraphs (b) and (c) of this section,

the absence shall not be considered temporary, and the parties may not be found to be "living with" one another or to be "member[s] of the same household." A finding of temporary absence would not be justified where one of the parties was committed to a penal institution for life or for a period exceeding the reasonable life expectancy of either, or was under a sentence of death; or where the parties had ceased to live in the same place of abode because of marital difficulties and had not resumed living together before death.

(e) *Relevant period of time.* (1) The determination as to whether a widow had been "living with" her husband shall be based upon the facts and circumstances as of the time of death of the miner.

(2) The determination as to whether a wife is a "member of the same household" as her husband shall be based upon the facts and circumstances with respect to the period or periods of time as to which the issue of membership in the same household is material. (See § 410.510(b).)

§ 410.394 "Living with"; child.

(a) *Defined.* "Living with" as used in 5 U.S.C. 8110(a)(3) means that the beneficiary and his child share the same residence and that the parent beneficiary is exercising or has the right to exercise parental control and authority over the child.

(b) *Periodic or temporary separation.* A beneficiary and his child will be considered to be sharing the same residence during a periodic or temporary separation if the circumstances indicate that the beneficiary and his child have shared and again expect to share a common residence when conditions permit.

(c) *Parental control and authority.* Parental control and authority may be exercised exclusively by one parent or jointly by both. However, the exercise of parental control and authority exclusively by one parent and then by the other over successive periods of time does not constitute the joint exercise of parental control and authority.

(d) *Relevant period of time.* The determination as to whether a child is "living with" the beneficiary shall be based on the facts and circumstances with respect to the period or periods of time as to which the issue of "living with" the beneficiary is material.

§ 410.395 Contributions and support.

(a) *"Support" defined.* The term "support" includes food, shelter, clothing, ordinary medical expenses, and other ordinary and customary items for the maintenance of the persons supported.

(b) *"Contributions" defined.* (1) "Contributions" refers to contributions actually provided by the contributor from his own property, or the use thereof, or by the use of his own credit.

(2) "Regular contributions" mean contributions that are customary and sufficient to constitute a material factor in the cost of the individual's support.

(3) When a wife receives, and uses for her support, income from her services or property and such income, under applicable State law, is the community property of herself and the miner, no part of such income is a "contribution" by the miner to his wife's support regardless of any legal interest the miner may have therein. However, when a wife receives, and uses for her support, income from the services and the property of the miner and, under applicable State law, such income is community property, all of such income is considered to be a contribution by the miner to his wife's support.

(c) *"Court order for support" defined.* References to support orders in §§ 410.330(f)(1), 410.350(c), and 410.360(b) mean any court order, judgment, or decree of a court of competent jurisdiction which requires regular contributions that are a material factor in the cost of the individual's support and which is in effect at the applicable time. If such contributions are required by a court order, this condition is met whether or not the contributions were actually made.

(d) *"Dependency" on miner defined.* A widow will be considered to be dependent on the miner for support for purposes of § 410.360(b) if during the year before his death she received from him regular contributions toward her support (see paragraph (b)(2) of this section).

Subpart D—Total Disability or Death Due to Pneumoconiosis

6. The authority citation for Part 410 has been deleted and a new authority citation for Subpart D is inserted as follows:

AUTHORITY: The provisions of this Subpart D issued under secs. 402 (b) and (f), 411, 425(a), and 508, 83 Stat. 793; 30 U.S.C. 902 (b) and (f), 921, 936(a), and 957.

7. New Subparts E and F are added to Part 410 of Chapter III to read as follows:

Subpart E—Payment of Benefits

Sec.

AUTHORITY: The provisions of this Subpart E issued under secs. 411(a), 412 (a) and (b), 413(b), 426(a), and 508, 83 Stat. 793; 30 U.S.C. 921(a), 922 (a) and (b), 923(b), 936(a), and 957. Sec. 410.565 also issued under sec. 3, 80 Stat. 309, 31 U.S.C. 952.

Subpart E—Payment of Benefits

§ 410.501 Payment periods.

Benefits are paid to beneficiaries during entitlement for payment periods consisting of full calendar months.

§ 410.505 Payment on behalf of another; "legal guardian" defined.

Benefits are paid only to the beneficiary or his legal guardian. As used in this section, "legal guardian" means an individual who has been appointed by a court of competent jurisdiction or otherwise appointed pursuant to law, to assume control of and responsibility for the care of the beneficiary, the management of his estate, or both.

§ 410.510 Benefit rates.

(a) *Basic rate.* A beneficiary is paid monthly benefits during entitlement at a rate equal to 50 percent of the minimum monthly payment to which a totally disabled Federal employee in Grade GS–2 would be entitled for such month under the Federal Employees' Compensation Act, chapter 81, title 5, United States Code. Such benefit rate for a month is determined by:

(1) Ascertaining the lowest annual rate of pay ("step 1") for Grade GS–2 of the General Schedule applicable to such month (see 5 U.S.C. 5332);

(2) Ascertaining the monthly rate thereof by dividing the amount determined in subparagraph (1) of this paragraph by 12;

(3) Ascertaining the minimum monthly payment under the Federal Employees' Compensation Act by multiplying the amount determined in subparagraph (2) of this paragraph by 75 percent (or 0.75) (see 5 U.S.C. 8112); and

(4) Ascertaining the basic rate under the Act by multiplying the amount determined in subparagraph (3) of this paragraph by 50 percent (or 0.50).

(b) *Augmented benefits in case of dependency.* (1) A beneficiary's benefit rate, as determined in paragraph (a) of this section, is increased for those months in which the beneficiary has one or more dependents who qualify under Subpart C of this part. This increase is referred to as an "augmentation." The beneficiary's basic rate is augmented at the rate of 50 percent for one such dependent, 75 percent for two such dependents, or 100 percent for three or more such dependents.

(2) A beneficiary's benefit rate is augmented to take account of a particular dependent beginning with the first month in which such dependent satisfies the conditions set forth in Subpart C of this part, and continues to be augmented through the month before the month in which such dependent ceases to satisfy the conditions set forth in Subpart C of this part.

(c) *Computation.* A computation prescribed by paragraph (a)(2), (3), (4), or (b) of this section is made to the third decimal place.

(d) *Benefit rates.*

	Beginning January 1971	Prior to January 1971
(1) Miner or widow with no dependents	$153.10	$144.50
(2) Miner or widow with one dependent	229.60	216.70
(3) Miner or widow with two dependents	267.90	252.80
(4) Miner or widow with three or more dependents	306.10	288.90

§ 410.515 Modification of benefit amounts; general.

Under certain conditions, the amount of monthly benefits as computed in § 410.510 must be modified to determine the amount actually to be paid to a beneficiary. A modification of the amount of a monthly benefit is required in the following instances:

(a) *Reduction.* A reduction from a beneficiary's monthly benefit may be required because of:

(1) A miner's excess earnings from wages and from net earnings from self-employment (see § 410.530); or

(2) Failure to report earnings from work in employment and self-employment within the prescribed period of time (see § 410.530); or

(3) The receipt by a beneficiary of payments made on account of any disability of the miner under State laws relating to workmen's compensation (including compensation for occupational disease), unemployment compensation, or disability insurance (see § 410.520).

(b) *Adjustment.* An adjustment in a beneficiary's monthly benefit may be required because an overpayment or underpayment has been made to such beneficiary (see §§ 410.560, 410.570, and 410.580).

(c) *Nonpayment.* No benefits under this part are payable to the residents of a State which reduces its payments made to beneficiaries pursuant to certain State laws (see § 410.550).

(d) *Suspension.* A suspension of a beneficiary's monthly benefits may be required when the Administration has information indicating that reductions on account of the miner's excess earnings (based on criteria in section 203(b) of the Social Security Act, 42 U.S.C. 403(b)) may reasonably be expected.

(e) *"Rounding" of benefit amounts.* Monthly benefit rates are payable in multiples of 10 cents. Any monthly benefit rate which, after all applicable computations, augmentations, and/or reductions is not a multiple of 10 cents, is increased to the next higher multiple of 10 cents. Since a fraction of a cent is not a multiple of 10 cents a benefit rate which contains such a fraction in the third decimal is raised to the next higher multiple of 10 cents.

§ 410.520 Reductions; receipt of State benefit.

(a) As used in this section, the term "State benefit" means a payment to a beneficiary made on account of any disability of the miner under State laws relating to workmen's compensation (including compensation for occupational disease), unemployment compensation, or disability insurance.

(b) Benefit payments to a beneficiary for a month are reduced (but not below zero) by an amount equal to any payments of State benefits received by such beneficiary for such month.

(c) Where a State benefit is paid periodically but not monthly, or in a lump sum as a commutation of or a substitute for periodic benefits, the reduction under this section is made at such time or times and in such amounts as the Administration determines will approximate as nearly as practicable the reduction required under paragraph (b) of this section. In making such a determination, a weekly State benefit is multiplied by 4⅓ and a biweekly benefit is multiplied by 2⅙, to ascertain the monthly equivalent for reduction purposes.

(d) Amounts included in an award of a State benefit which are specifically identifiable as being for medical or legal expenses paid or incurred by the beneficiary in connection with his claim for such State benefit or the injury or occupational disease on which it is based, are excluded in computing the reduction under paragraph (b) of this section, unless such expenditures were directly reimbursed by the beneficiary's State, employer, or employer's carrier.

§ 410.530 Reductions; excess earnings.

Benefit payments to a miner are reduced by an amount equal to the deductions which would be made with respect to excess earnings under the provisions of sections 203 (b), (f), (g), (h), (j), and (l) of the Social Security Act (42 U.S.C. 403 (b), (f), (g), (h), (j), and (l)), as if such benefit payments were benefits payable under section 202 of the Social Security Act (42 U.S.C. 402).

§ 410.540 Reductions; more than one reduction event.

If a reduction for receipt of State benefits (see § 410.520) and a reduction on account of excess earnings (see § 410.530) are chargeable to the same month, the benefit for such month is first reduced (but not below zero) by the amount of the State benefits (as determined in accordance with § 410.520(c)), and the remainder of the benefit for such month, if any, is then reduced (but not below zero) by the amount of excess earnings chargeable to such month.

§ 410.550 Nonpayment of benefits to residents of certain States.

No benefit shall be paid under this part to the residents of any State which, after December 30, 1969, reduces the benefits payable to persons eligible to receive benefits under this part, under its State laws which are applicable to its general work force with regard to workmen's compensation (including compensation for occupational disease), unemployment compensation, or disability insurance benefits which are funded in whole or in part out of employer contributions.

§ 410.560 Overpayments.

(a) *General.* As used in this subpart, the term "overpayment" includes a payment where no amount is payable under part B of title IV of the Act; a payment in excess of the amount due under part B of title IV of the Act; a payment resulting from the failure to reduce benefits under section 412(b) of the Act (see §§ 410.520, 410.530); a payment to a resident of a State whose residents are not eligible for payment (see § 410.550); and a payment resulting from the failure to terminate benefits of an individual no longer entitled thereto.

(b) *Overpaid beneficiary is living.* If the beneficiary to whom an overpayment was made is, at the time of a determination of such overpayment, entitled to benefits, or at any time thereafter becomes so entitled, no benefit for any month is payable to such individual, except as provided in paragraph (c) of this section, until an amount equal to the amount of the overpayment has been withheld or refunded.

(c) *Adjustment by withholding part of a monthly benefit.* Adjustment under paragraph (b) of this section may be effected by withholding a part of the monthly benefit payable to a beneficiary where it is determined that:

(1) Withholding the full amount each month would deprive the beneficiary of income required for ordinary and necessary living expenses;

(2) The overpayment was not caused by the beneficiary's intentionally false statement or representation, or willful concealment of, or deliberate failure to furnish, material information; and

(3) Recoupment can be effected in an amount of not less than $10 a month and at a rate which would not extend the period of adjustment beyond 3 years after the initiation of the adjustment action.

(d) *Overpaid beneficiary dies before adjustment.* If an overpaid beneficiary dies before adjustment is completed under the provisions of paragraph (b) of this section, recovery of the overpayment shall be effected through repayment by the estate of the deceased overpaid beneficiary, or by withholding of amounts due the estate of such deceased beneficiary, or both.

§ 410.565 Collection and compromise of claims for overpayment.

(a) *General effect of the Federal Claims Collection Act of 1966.* Claims by the Administration against an individual for recovery of overpayments under part B of title IV of the Act, not exceeeding the sum of $20,000, exclusive of interest, may be compromised, or collection suspended or terminated where such individual or his estate does not have the present or prospective ability to pay the full amount of the claim within a reasonable time (see paragraph (c) of this section) or the cost of collection is likely to exceed the amount of recovery (see paragraph (d) of this section) except as provided under paragraph (b) of this section.

(b) *When there will be no compromise, suspension or termination of collection of a claim for overpayment—(1) Overpaid individual alive.* In any case where the overpaid individual is alive,

a claim for overpayment will not be compromised, nor will there be suspension or termination of collection of the claim by the Administration if there is an indication of fraud, the filing of a false claim, or misrepresentation on the part of such individual or on the part of any other party having an interest in the claim.

(2) *Overpaid individual deceased.* In any case where the overpaid individual is deceased (i) a claim for overpayment in excess of $5,000 will not be compromised, nor will there be suspension or termination of collection of the claim by the Administration if there is an indication of fraud: the filing of a false claim, or misrepresentation on the part of such deceased individual, and (ii) a claim for overpayment regardless of the amount will not be compromised, nor will there be suspension or termination of collection of the claim by the Administration if there is an indication that any person other than the deceased overpaid individual had a part in the fraudulent action which resulted in the overpayment.

(c) *Inability to pay claim for recovery of overpayment.* In determining whether the overpaid individual is unable to pay a claim for recovery of an overpayment under part B of title IV of the Act, the Administration will consider such individual's age, health, present and potential income (including inheritance prospects), assets (e.g., real property, savings account), possible concealment or improper transfer of assets, and assets or income of such individual which may be available in enforced collection proceedings. The Administration will also consider exemptions available to such individual under the pertinent State or Federal law in such proceedings. In the event the overpaid individual is deceased, the Administration will consider the available assets of the estate, taking into account any liens or superior claims against the estate.

(d) *Cost of collection or litigative probabilities.* Where the probable costs of recovering an overpayment under part B of title IV of the Act would not justify enforced collection proceedings for the full amount of the claim or there is doubt concerning the Administration's ability to establish its claim as well as the time which it will take to effect such collection, a compromise or settlement for less than the full amount will be considered.

(e) *Amount of compromise.* The amount to be accepted in compromise of a claim for overpayment under part B of title IV of the Act shall bear a reasonable relationship to the amount which can be recovered by enforced collection proceedings giving due consideration to the exemptions available to the overpaid individual under State or Federal law and the time which such collection will take.

(f) *Payment.* Payment of the amount which the Administration has agreed to accept as a compromise in full settlement of a claim for recovery of an overpayment under part B of title IV of the Act must be made within the time and in the manner set by the Administration. A claim for such recovery of the overpayment shall not be considered compromised or settled until the full payment of the compromised amount has been made within the time and manner set by the Administration. Failure of the overpaid individual or his estate to make such payment as provided shall result in reinstatement of the full amount of the overpayment less any amounts paid prior to such default.

§ 410.570 Underpayments.

(a) *General.* As used in this subpart, the term "underpayment" includes a payment in an amount less than the amount of the benefit due for such month, and nonpayment where some amount of such benefits are payable.

(b) *Underpaid beneficiary is living.* If a beneficiary to whom an underpayment is due is living, the amount of such underpayment will be paid to such beneficiary.

(c) *Beneficiary dies before adjustment of underpayment.* If a beneficiary to whom an underpayment is due dies before receiving payment or negotiating a check or checks representing such payment, such underpayment will be distributed to the legal representative of the estate of the deceased beneficiary as defined in paragraph (d) of this section.

(d) *Definition of legal representative.* The term "legal representative," for the purpose of qualifying to receive an underpayment, generally means the executor or the administrator of the estate of the deceased beneficiary. However, it may also include an individual, institution, or organization acting on behalf of an unadministered estate, provided the person can give the Administration good acquittance (as defined in paragraph (e) of this section). The following persons may qualify as legal representative for purposes of this section, provided they can give the Administration good acquittance:

(1) A person who qualifies under a State's "small estate" statute; or

(2) A person resident in a foreign country who, under the laws and customs of that country, has the right to receive assets of the estate; or

(3) A public administrator; or

(4) A person who has the authority, under applicable law, to collect the assets of the estate of the deceased beneficiary.

(e) *Definition of "good acquittance."* A person is considered to give the Administration "good acquittance" when payment to that person will release the Administration from further liability for such payment.

§ 410.580 Relation to provisions for reductions or increases.

The amount of an overpayment or underpayment is the difference between the amount actually paid to the beneficiary and the amount of the payment to which the beneficiary was actually entitled. Such overpayment or underpayment, for example, would be equal to the difference between the amount of a benefit in fact paid to the beneficiary and the amount of such benefit as reduced under section 412(b) of the Act, as increased pursuant to section 412(a)(1), or as augmented under section 412(a)(3), of the Act. In effecting an adjustment with respect to an overpayment, no amount can be considered as having been withheld from a particular benefit which is in excess of the amount of such benefit as so reduced. Overpayments and underpayments simultaneously outstanding on account of the same beneficiary are first adjusted against one another before adjustment pursuant to the other provisions of this subpart.

Subpart F—Determinations of Disability, Other Determinations, Administrative Review, Finality of Decisions, and Representation of Parties

Sec.

AUTHORITY: The provisions of this Subpart F issued under secs. 413(b), 426(a), 507, and 508, 83 Stat. 794; 30 U.S.C. 923(b), 936(a), 956, and 957.

Subpart F—Determinations of Disability, Other Determinations, Administrative Review, Finality of Decisions, and Representation of Parties

§ 410.601 Determinations of disability.

(a) *By State agencies.* In any State which has entered into an agreement with the Secretary providing therefor, determinations as to whether a miner is under a total disability (as defined in § 410.402) due to pneumoconiosis (as defined in § 410.110(o)), as to the date total disability began, and as to the date total disability ceases, shall be made by the State agency or agencies designated in such agreement on behalf of the Secretary with respect to all individuals in such State, or with respect to such class or classes of individuals in the State as may be designated in the agreement.

(b) *By the Administration.* Determinations as to whether a miner is under a total disability (as defined in § 410.402), due to pneumoconiosis (as defined in § 410.110(o)), as to the date the total disability began, and as to the date total disability ceases, shall be made by the Administration on behalf of the Secretary with respect to individuals in any State which has not entered into an agreement to make such determinations, or with respect to any class or classes of individuals to which such an agreement is not applicable, or with respect to any individuals outside the United States. In addition, all other determinations as to entitlement to and the amounts of benefits shall be made by the Administration on behalf of the Secretary.

(c) *Review by Administration of State agency determinations.* The Administration may review a determination made by a State agency that a miner is under a total disability and, as a result of such review, may determine that such individual is not under a total disability, or that the total disability began on a date later than that determined by the State agency, or that the total disability ceased on a date earlier than that determined by the State agency.

(d) *Initial determinations as to entitlement or termination of entitlement.* After any determination as to whether an individual is under a total disability or has ceased to be under a total disability, the Administration shall make an initial determination (see § 410.610) with respect to entitlement to benefits.

§ 410.610 Administrative actions that are initial determinations.

(a) *Entitlement to benefits.* The Administration, subject to the limitations of a Federal-State agreement pursuant to section 413(b) of the Act (see § 410.601 (a)), shall make findings, setting forth the pertinent facts and conclusions, and an initial determination with respect to entitlement to benefits of any individual who has filed a claim for benefits. The determination shall include the amount, if any, to which the individual is entitled and, where applicable, such amount as reduced (see § 410.515), augmented or otherwise increased (see § 410.510).

(b) *Modification of the amount of benefits.* The Administration shall, under the circumstances hereafter stated in this paragraph, make findings, setting forth the pertinent facts and conclusions, and an initial determination as to whether:

(1) There should be a reduction under section 412(b) of the Act, and if a reduction is to be made, the amount thereof (see § 410.515(a)); or

(2) There has been an overpayment (see § 410.560) or an underpayment (see § 410.570) of benefits and, if so, the amount thereof, and the adjustment to be made by increasing or decreasing the monthly benefits to which a beneficiary is entitled (see § 410.515(b)), and, in the case of an underpayment due a deceased beneficiary, the legal representative (if any) to whom the underpayment should be paid.

(c) *Termination of benefits.* The Administration, subject to the limitations of a Federal-State agreement pursuant to section 413(b) of the Act (see § 410.601 (a)), shall, with respect to a beneficiary who has been determined to be entitled to benefits, make findings, setting forth the pertinent facts and conclusions, and an initial determination as to whether, under the applicable provisions of part B of title IV of the Act, such beneficiary's entitlement to benefits has ended and, if so, the effective date of such termination.

(d) *Reinstatement of benefits.* The Administration shall, with respect to a beneficiary whose benefits have been determined to have ended under paragraph (c) of this section, make findings, setting forth the pertinent facts and conclusions, and an initial determination as to whether the individual is entitled to a reinstatement of benefits thus ended, and if so, the effective date of such reinstatement. Such findings of fact and determination shall be made whenever a party makes a written request for reinstatement or whenever evidence is received which justifies such reinstatement (see for example §§ 410.671–410.673).

(e) *Augmentation of benefits.* The Administration shall make findings, setting forth the pertinent facts and conclusions, and an initial determination, as to whether a beneficiary has or continues to have dependents who, at the appropriate time, qualify under the relationship, dependency, and other applicable requirements of Subpart C of this part, for purposes of entitling such beneficiary to an augmentation of his benefits pursuant to § 410.510(b).

(f) *Other increases in benefit amounts.* The Administration shall make findings, setting forth the pertinent facts and conclusions, and an initial determination, as to whether a beneficiary is entitled to an increase in benefits (other than an augmentation) pursuant to section 412(a) of the Act.

(g) *Applicant's failure to submit evidence.* If an individual fails to submit in support of his claim for benefits or request for augmentation or other increase of benefits, such evidence as may be requested by the Administration pursuant to § 410.240 or any provision of the Act, the Administration may make

an initial determination disallowing the individual's claim or his request for such augmentation or other increase. The initial determination, however, shall specify the conditions of entitlement to benefits or to an augmentation or other increase of benefits that the individual has failed to satisfy because of his failure to submit the requested evidence (see § 410.240).

(h) *Failure to file or prosecute claim under applicable State workmen's compensation law.* The Administration shall make findings, setting forth the pertinent facts and conclusions, and an initial determination, as to whether an individual has failed to file or to prosecute a claim under the applicable State workmen's compensation law pursuant to § 410.215.

(i) *Withdrawal of claim or cancellation of withdrawal request.* When a request for withdrawal of a claim, or a request for cancellation of a "request for withdrawal" of a claim, is denied by the Administration, the Administration shall make findings setting forth the pertinent facts and conclusions and an initial determination of denial.

(j) *Request for reimbursement for medical expenses—amount in controversy $100 or more.* The Administration shall, with respect to a claimant who requests reimbursement for medical expenses (see § 410.240(h)), make findings, setting forth the pertinent facts and conclusions and, where the amount in controversy is $100 or more, an initial determination as to whether and the extent to which the expenses for which the reimbursement request is made are medical expenses reasonably incurred by the claimant in establishing his claim. (Also see § 410.615(e).)

§ 410.615 Administrative actions that are not initial determinations.

Administrative actions which shall not be considered initial determinations, but which may receive administrative review include, but are not limited to, the following:

(a) The suspension of benefits pursuant to the criteria in section 203(h)(3) of the Social Security Act (42 U.S.C. 403(h)(3)), pending investigation and determination of any factual issue as to the applicability of a reduction under section 412(b) of the Act equivalent to the amount of a deduction because of excess earnings under section 203(b) of the Social Security Act (42 U.S.C. 403(b)) (see §§ 410.515(d) and 410.530).

(b) The withholding by the Administration in any month, for the purpose of recovering an overpayment, of less than the full amount of benefits otherwise payable in that month (see § 410.560(c)).

(c) The disqualification or suspension of an individual from acting as a representative in a proceeding before the Administration (see § 410.687 et seq.).

(d) The determination by the Administration under the authority of the Federal Claims Collection Act (31 U.S.C. 951–953) not to compromise a claim for overpayment under part B of title IV of the Act, or not to suspend or terminate collection of such a claim, or the determination to compromise such a claim, including the compromise amount and the time and manner of payment (see § 410.565).

(e) Where the amount in controversy is less than $100, the denial of a request for reimbursement of medical expenses (see § 410.240(h)) which are claimed to have been incurred by the claimant in establishing his claim for benefits, or the approval of such request for reimbursement in an amount less than the amount requested. (Also see § 410.610(j).)

§ 410.620 Notice of initial determination.

Written notice of an initial determination shall be mailed to the party to the determination at his last known address, except that no such notice shall be required in the case of a determination that a party's entitlement to benefits has ended because of such party's death (see § 410.610(c)). If the initial determination disallows, in whole or in part, the claim of a party, or if the initial determination is to the effect that a party's entitlement to benefits has ended, or that a reduction or adjustment is to be made in benefits, the notice of the determination sent to the party shall state the basis for the determination. Such notice shall also inform the party of the right to reconsideration (see § 410.623) unless such determination is to the effect that a reduction or a termination is to be made and such determination is based only upon facts reported to the Administration by the party to the determination. Notice of termination because of cessation of disability shall inform the party to the determination of the right to reconsideration in all cases.

§ 410.621 Effect of initial determination.

The initial determination shall be final and binding upon the party or parties to such determination unless it is reconsidered in accordance with §§ 410.623–410.629, or it is revised in accordance with § 410.671.

§ 410.622 Reconsideration and hearing.

Any party who is dissatisfied with an initial determination may request that the Administration reconsider such determination, as provided in § 410.623. If a request for reconsideration is filed, such action shall not constitute a waiver of the right to a hearing subsequent to such reconsideration if the party requesting such reconsideration is dissatisfied with the determination of the Administration made on such reconsideration; and a request for a hearing may thereafter be filed, as is provided in § 410.630.

§ 410.623 Reconsideration; right to reconsideration.

The Administration shall reconsider an initial determination if a written request for reconsideration is filed, as provided in § 410.624, by or for the party to the initial determination (see § 410.610). The Administration shall also reconsider an initial determination if a written request for reconsideration is filed, as provided in § 410.624, by an individual as a widow or representative of a decedent's estate, who makes a showing in writing that his or her rights with respect to benefits, may be prejudiced by such determination.

§ 410.624 Time and place of filing request.

The request for reconsideration shall be made in writing and filed at an office of the Administration within 6 months from the date of mailing notice of the initial determination, unless such time is extended as provided in § 410.668.

§ 410.625 Parties to the reconsideration.

The parties to the reconsideration shall be the person who was the party to the initial determination (see § 410.610) and any other person referred to in § 410.623 upon whose request the initial determination is reconsidered.

§ 410.626 Notice of reconsideration.

If the request for reconsideration is filed by a person other than the party to the initial determination, the Administration shall, before such reconsideration, mail a written notice to such party at his last known address, informing him that the initial determination is being reconsidered. In addition, the Administration shall give such party a reasonable opportunity to present such evidence and contentions as to fact or law as he may desire relative to the determination.

§ 410.627 Reconsidered determination.

When a request for reconsideration has been filed, as provided in §§ 410.623 and 410.624, the Administration or the State agency, as appropriate (see § 410.601), shall reconsider the determination with respect to disability or the initial determination in question and the findings upon which it was based; and upon the basis of the evidence considered in connection with the initial determination and whatever other evidence is submitted by the parties or is otherwise obtained, the Administration shall make a reconsidered determination affirming or revising, in whole or in part, the findings and determination in question.

§ 410.628 Notice of reconsidered determination.

Written notice of the reconsidered determination shall be mailed to the parties at their last known addresses. The reconsidered determination shall state the basis therefor and inform the parties of their right to a hearing (see § 410.630).

§ 410.629 Effect of reconsidered determination.

The reconsidered determination shall be final and binding upon all parties to the reconsideration unless a hearing is requested in accordance with § 410.631 and a decision rendered or unless such determination is revised in accordance with § 410.671.

§ 410.630 Hearing: right to hearing.

An individual has a right to a hearing about any matter designated in § 410.610, if:

(a) An initial determination and a reconsideration of the initial determination have been made by the Administration; and

(b) The individual is a party referred to in § 410.632 or § 410.633; and

(c) The individual has filed a written request for a hearing under the provisions described in § 410.631.

§ 410.631 Time and place of filing request.

The request for hearing shall be made in writing and filed at an office of the Administration or with a hearing examiner, or the Appeals Council. Except where the time is extended as provided in § 410.669, the request for hearing must be filed:

(a) Within 6 months after the date of mailing notice of the reconsidered determination to such individual; or

(b) Where an effective date (not more than 30 days later than the date of mailing) is expressly indicated in such notice, within 6 months after such effective date.

§ 410.632 Parties to a hearing.

The parties to a hearing shall be the person or persons who were parties to the initial determination in question and the reconsideration. Any other individual may be made a party if such individual's rights with respect to benefits may be prejudiced by the decision, upon notice given to him by the hearing examiner to appear at the hearing or otherwise present such evidence and contentions as to fact or law as he may desire in support of his interest.

§ 410.633 Additional parties to the hearing.

The following individuals, in addition to those named in § 410.632, may also be parties to the hearing. A widow or representative of a decedent's estate, who makes a showing in writing that such individual's rights with respect to benefits may be prejudiced by any decision that may be made, may be a party to the hearing.

§ 410.634 Hearing examiner.

The hearing provided for in this Subpart F shall, except as herein provided, be conducted by a hearing examiner designated by the Director of the Bureau of Hearings and Appeals of the Administration or his delegate. In an appropriate case, the Director may designate another hearing examiner or a member or members of the Appeals Council to conduct a hearing, in which case the provisions of this Subpart F governing the conduct of a hearing by a hearing examiner shall be applicable thereto.

§ 410.635 Disqualification of hearing examiner.

No hearing examiner shall conduct a hearing in a case in which he is prejudiced or partial with respect to any party, or where he has any interest in the matter pending for decision before him. Notice of any objection which a party may have to the hearing examiner who will conduct the hearing, shall be made by such party at his earliest opportunity. The hearing examiner shall consider such objection and shall, in his discretion, either proceed with the hearing or withdraw. If the hearing examiner withdraws, another hearing examiner shall be designated by the Director of the Bureau of Hearings and Appeals of the Administration or his delegate to conduct the hearing. If the hearing examiner does not withdraw, the objecting party may, after the hearing, present his objections to the Appeals Council, as provided in §§ 410.660–410.664 as reasons why the hearing eaxminer's decision should be revised or a new hearing held before another hearing examiner.

§ 410.636 Time and place of hearing.

The hearing examiner shall fix a time and place for the hearing, written notice of which, unless waived by a party, not less than 10 days prior to such time, shall be mailed to the parties at their last known addresses, or given to them by personal service. Written notice of the objections of any party to the time and place fixed for a hearing shall be filed by the objecting party with the hearing examiner at the earliest practicable opportunity. The notice shall state the reasons for the party's objection and his choice as to the time and place for the hearing. The hearing examiner may, for good cause, fix a new time and/or place for the hearing.

§ 410.637 Hearing on new issues.

At any time after a request for hearing has been made, as provided in § 410.631, but prior to the mailing of notice of the decision, the hearing examiner may, in his discretion, either on the application of a party or his own motion, in addition to the matters brought before him by the request for hearing, give notice that he will also consider any specified new issue (see § 410.610) whether pertinent to the same or a related matter, and whether arising subsequent to the request for hearing, which may affect the rights of such party to benefits under this part even though the Administration has not made an initial and reconsidered determination with respect to such new issue: *Provided*, That notice of the time and place of the hearing on any new issue shall, unless waived, be given to the parties within the time and manner specified in § 410.636: *And provided further*, That the determination involved is not one within the jurisdiction of a State agency under a Federal-State agreement entered into pursuant to section 413(b) of the Act. Upon the giving of such notice, the hearing examiner shall, except as otherwise provided, proceed to hearing on such new issue in the same manner as he would on an issue on which an initial and reconsidered determination has been made by the Administration and a hearing requested with respect thereto by a party entitled to such hearing.

§ 410.638 Change of time and place for hearing.

The hearing examiner may change the time and place for the hearing, either on his own motion or for good cause shown by a party. The hearing examiner may adjourn or postpone the hearing, or he may reopen the hearing for the receipt of additional evidence at any time prior to the mailing of notice to the party of the decision in the case. Reasonable notice shall be given to the parties of any change in the time or place of hearing or of an adjournment or a reopening of the hearing.

§ 410.639 Conduct of hearing.

Hearings shall be open to the parties and to such other persons as the hearing examiner deems necessary and proper. The hearing examiner shall inquire fully into the matters at issue and shall receive in evidence the testimony of witnesses and any documents which are relevant and material to such matters. If the hearing examiner believes that there is relevant and material evidence available which has not been presented at the hearing, the hearing examiner may adjourn the hearing or, at any time prior to the mailing of notice of the decision, reopen the hearing for the receipt of such evidence. The order in which evidence and allegations shall be presented and the procedure at the hearing generally, except as these regulations otherwise expressly provide, shall be in the discretion of the hearing examiner and of such nature as to afford the parties a reasonable opportunity for a fair hearing.

§ 410.641 Evidence.

Evidence may be received at the hearing even though inadmissible under rules of evidence applicable to court procedures.

§ 410.642 Witnesses.

Witnesses at the hearing shall testify under oath or affirmation or as directed by the hearing examiner, unless they are excused by the hearing examiner for cause. The hearing examiner may examine the witnesses and shall allow the parties or their representatives to do so. If the hearing examiner conducts the examination of a witness, he may allow the parties to suggest matters as to which they desire the witness to be questioned, and the hearing examiner shall question the witness with respect to such matters if they are relevant and material to any issue pending for decision before him.

§ 410.643 Oral argument and written allegations.

The parties, upon their request, shall be allowed a reasonable time for the presentation of oral argument or for the filing of briefs or other written statements of allegations as to facts or law. Where there is more than one party to the hearing, copies of any brief or other written statement shall be filed in sufficient number that they may be made available to any party.

§ 410.644 Record of hearing.

A complete record of the proceedings at the hearing shall be made. The record shall be transcribed in any case which is certified to the Appeals Council without decision by the hearing examiner (see §§ 410.654 and 410.657 to 410.659 inclusive), in any case where a civil action is commenced against the Secretary (see § 410.666), or in any other case when directed by the hearing examiner or the Appeals Council.

§ 410.645 Joint hearings.

When two or more hearings are to be held, and the same or substantially similar evidence is relevant and material to the matters in issue at each such hearing, the hearing examiner may fix the same time and place for each hearing and conduct all such hearings jointly. Where joint hearings are held, a single record of the proceedings shall be made and the evidence introduced in one case may be considered as introduced in the others, and a separate or joint decision shall be made, as appropriate.

§ 410.646 Consolidated issues.

When one or more additional issues are raised by the hearing examiner pursuant to § 410.637, such issues may, in the discretion of the hearing examiner, be consolidated for hearing and decision with other issues pending before him upon the same request for a hearing, whether or not the same or substantially similar evidence is relevant and material to the matters in issue. A single decision may be made upon all such issues.

§ 410.647 Waiver of right to appear and present evidence.

If all parties waive their right to appear before the hearing examiner and present evidence and contentions personally or by representative, it shall not be necessary for the hearing examiner to give notice of and conduct an oral hearing as provided in §§ 410.636 to 410.646, inclusive. A waiver of the right to appear and present evidence and allegations as to facts and law shall be made in writing and filed with the hearing examiner. Such waiver may be withdrawn by a party at any time prior to the mailing of notice of the decision in the case. Even though all of the parties have filed a waiver of the right to appear and present evidence and contentions at a hearing before the hearing examiner, the hearing examiner may, nevertheless, give notice of a time and place and conduct a hearing as provided in §§ 410.636 to 410.646, inclusive, if he believes that the personal appearance and testimony of the party or parties would assist him to ascertain the facts in issue in the case. Where such a waiver has been filed by all parties, and they do not appear before the hearing examiner personally or by representative, the hearing examiner shall make a record of the relevant written evidence, including applications, written statements, certificates, affidavits, reports, and other documents which were considered in connection with the initial determination and reconsideration, and whatever additional relevant and material evidence the party or parties may present in writing for consideration by the hearing examiner. Such documents shall be considered as all of the evidence in the case and the decision, as provided for in § 410.654, shall be based on them.

§ 410.648 Dismissal of request for hearing; by application of party.

With the approval of the hearing examiner at any time prior to the mailing of notice of the decision, a request for a hearing may be withdrawn or dismissed upon the application of the party or parties filing the request for such hearing. A party may request a dismissal by filing a written notice of such request with the hearing examiner or orally stating such request at the hearing.

§ 410.649 Dismissal by abandonment of party.

With the approval of the hearing examiner, a request for hearing may also be dismissed upon its abandonment by the party or parties who filed it. A party shall be deemed to have abandoned a request for hearing if neither the party nor his representative appears at the time and place fixed for the hearing and either (a) prior to the time for hearing such party does not show good cause as to why neither he nor his representative can appear or (b) within 10 days after the mailing of a notice to him by the hearing examiner to show cause, such party does not show good cause for such failure to appear and failure to notify the hearing examiner prior to the time fixed for hearing that he cannot appear.

§ 410.650 Dismissal for cause.

The hearing examiner may, on his own motion, dismiss a hearing request, either entirely or as to any stated issue, under any of the following circumstances:

(a) *Res judicata.* Where there has been a previous determination or decision by the Secretary with respect to the rights of the same party on the same facts pertinent to the same issue or issues which has become final either by judicial affirmance or, without judicial consideration, upon the claimant's failure timely to request reconsideration, hearing, or review, or to commence a civil action with respect to such determination or decision (see §§ 410.624, 410.631, 410.661, and 410.666).

(b) *No right to hearing.* Where the party requesting a hearing is not a proper party under § 410.632 or § 410.633 or does not otherwise have a right to a hearing under § 410.630.

(c) *Hearing request not timely filed.* Where the party has failed to file a hearing request timely pursuant to § 410.631 and the time for filing such request has not been extended as provided in § 410.669.

(d) *Death of party.* Where the party who filed the hearing request dies and there is no information before the hearing examiner or the Administration showing that an individual who is not a party may be prejudiced by the Administration's determination which is the subject of the request for hearing: *Provided,* That if, within 6 months from the date of mailing notice of the Administration's reconsidered determination to the original party or within 3 months from the date notice of such dismissal is mailed to the original party at his last known address, whichever is later, any such other individual states in writing that he desires a hearing on such claim and shows that he may be prejudiced by the Administration's initial determination, then the dismissal of the request for hearing shall be vacated.

§ 410.651 Notice of dismissal and right to request review thereon.

Notice of the hearing examiner's dismissal action shall be given to the parties or mailed to them at their last known addresses. Such notice shall advise the parties of their right to request review of the dismissal action by the Appeals Council (see § 410.660).

§ 410.652 Effect of dismissal.

The dismissal of a request for hearing shall be final and binding unless vacated (see § 410.653).

§ 410.653 Vacation of dismissal of request for hearing.

A hearing examiner or the Appeals Council may, on request of the party and for good cause shown, vacate any dismissal of a request for hearing at any time within 6 months from the date of mailing notice of the dismissal to the party requesting the hearing at his last known address. In any case where a hearing examiner has dismissed the hearing request, the Appeals Council may, on its own motion, within 60 days after the mailing of such notice, review such dismissal and may, in its discretion, vacate such dismissal.

§ 410.654 Hearing examiner's decision or certification to Appeals Council.

As soon as practicable after the close of a hearing, the hearing examiner, except as herein provided, shall make a decision in the case or certify the case with a recommended decision to the Appeals Council for decision (see §§ 410.657–410.659). If the hearing examiner makes a decision in the case, such decision shall be based upon the evidence adduced at the hearing (§§ 410.636–410.646, inclusive) or otherwise included in the hearing record (see § 410.647). The decision shall be made in writing and contain findings of fact and a statement of reasons. A copy of the decision shall be mailed to the parties at their last known addresses.

§ 410.655 Effect of hearing examiner's decision.

The hearing examiner's decision, provided for in § 410.654, shall be final and binding upon all parties to the hearing unless it is reviewed by the Appeals Council (see §§ 410.663–410.665) or unless it is revised in accordance with § 410.671. If a party's request for review of the hearing examiner's decision is denied

(see § 410.662) or is dismissed (see § 410.667), such decision shall be final and binding upon all parties to the hearing unless a civil action is filed in a district court of the United States to the extent permitted by section 413(b) of the Act (see § 410.670a), or unless the decision is revised in accordance with § 410.671.

§ 410.656 Removal of hearing to Appeals Council.

The Appeals Council on its own motion may remove to itself any request for hearing pending before a hearing examiner. The hearing on any matter so removed to the Appeals Council shall be conducted in accordance with the requirements of §§ 410.637 to 410.653, inclusive. Notice of such removal shall be mailed to the parties at their last known addresses.

§ 410.657 Appeals Council proceedings on certification and review; procedure before Appeals Council on certification by the hearing examiner.

When a case has been certified to the Appeals Council by a hearing examiner with his recommended decision (see § 410.654), the hearing examiner shall mail notice of such action to the parties at their last known addresses. The parties shall be notified of their right to file with the Appeals Council within 10 days from the date of mailing of the recommended decision, briefs or other written statements of exceptions or allegations as to applicable fact and law, except in the case of suspension or disqualification (see § 410.694(b)). Upon request of any party made within such 10-day period, a 10-day extension of time for filing such briefs or statements shall be granted and, upon a showing of good cause, such 10-day period may be extended, as appropriate. Where there is more than one party, copies of such briefs or written statements shall be filed in sufficient number that they may be made available to any party requesting a copy or any other party designated by the Appeals Council. Copies or a statement of the contents of the documents or other written evidence received in evidence in the hearing record, and a copy of the transcript of oral evidence adduced at the hearing, if any, or a condensed statement thereof shall be made available to any party upon request, upon payment of the cost, or if such cost is not readily determinable, the estimated amount thereof, unless, for good cause shown, such payment is waived. When a case has been certified to the Appeals Council by a hearing examiner for decision any party shall be given, upon his request, a reasonable opportunity to appear before the Appeals Council for the purpose of presenting oral argument.

§ 110.658 Evidence in proceeding before Appeals Council.

Evidence in addition to that admitted into the hearing record by the hearing examiner may not be received as evidence except where it appears to the Appeals Council that such additional evidence may affect its decision. If no additional material is presented, but such evidence is available and may affect its decision, the Appeals Council shall receive such evidence or designate a hearing examiner or member of the Appeals Council before whom the evidence shall be introduced. Before such additional evidence is received, notice that evidence will be received with respect to certain matters shall be mailed to the parties, unless such notice is waived, at their last known addresses, and the parties shall be given a reasonable opportunity to present evidence which is relevant and material to such matters. When the additional evidence is presented to a hearing examiner or a member of the Appeals Council, a transcript or a condensed statement of such evidence shall be made available to any party upon request, upon payment of the cost, or if such cost is not readily determinable, the estimated amount thereof, unless, for good cause shown, such payment is waived.

§ 410.659 Decision of Appeals Council.

The decision of the Appeals Council, when a case has been certified to it by a hearing examiner along with his recommended decision, shall be made in accordance with the provisions of § 410.665.

§ 410.660 Right to request review of hearing examiner's decision or dismissal.

If a hearing examiner has made a decision, as provided in § 410.654, or dismissed a request for hearing, as provided in §§ 410.648 through 410.650, any party thereto may request the Appeals Council to review such decision or dismissal.

§ 410.661 Time and place of filing request.

The request for review shall be made in writing and filed with an office of the Administration, or with a hearing examiner, or the Appeals Council. Such request shall be accompanied by whatever documents or other evidence the party desires the Appeals Council to consider in its review. The request for review must be filed within 60 days from the date of mailing notice of the hearing examiner's decision or dismissal, except as provided in § 410.669.

§ 410.662 Action by Appeals Council on review.

The Appeals Council may dismiss (see § 410.667) or, in its discretion, deny or grant a party's request for review of a hearing examiner's decision, or, may, on its own motion, within 90 days from the date of mailing notice of such decision, reopen such decision for review or for the purpose of dismissing the party's request for hearing for any reason for which it could have been dismissed by the hearing examiner (see §§ 410.648 through 410.650). Notice of the action by the Appeals Council shall be mailed to the party at his last known address.

§ 410.663 Procedure before Appeals Council on review.

Whenever the Appeals Council determines to review a hearing examiner's decision (except when the case is remanded to a hearing examiner in accordance with § 410.665), the Appeals Council shall make available to any party upon request, copies or a statement of the contents of the documents or other written evidence upon which the hearing examiner's decision was based, and a copy of the transcript of oral evidence, if any, or a condensed statement thereof, upon payment of the cost, or if such cost is not readily determinable, the estimated amount thereof, unless for good cause shown, such payment is waived. The parties shall be given, upon request, a reasonable opportunity to file briefs or other written statements of allegations as to fact and law. Copies of such brief or other written statements, where there is more than one party, shall be filed in sufficient number that they may be made available to any party requesting a copy and to any other party designated by the Appeals Council.

§ 410.664 Evidence admissible on review.

Evidence in addition to that introduced at the hearing before the hearing examiner, or documents before the hearing examiner where such hearing was waived (see § 410.647), may not be admitted except where it appears to the Appeals Council that such evidence is relevant and material to an issue before it and thus may affect its decision. Where no such evidence is presented, and it appears to the Appeals Council that additional material evidence is available which may affect its decision, the Appeals Council shall receive such evidence and designate a hearing examiner or member of the Appeals Council before whom the evidence shall be introduced. Before additional evidence is admitted into the record, as provided in this section, notice that evidence will be received with respect to certain issues shall be mailed to the parties, unless such notice is waived, at their last known addresses, and the parties shall be given a reasonable opportunity to comment thereon and to present evidence which is relevant and material to such issues. When the additional evidence is presented to a hearing examiner or a member of the Appeals Council, a transcript or a condensed statement of such evidence shall be made available to any party upon request, upon payment of the cost, or if such cost is not readily determinable, the estimated amount thereof, unless, for good cause shown, such payment is waived.

§ 410.665 Decision by Appeals Council or remanding of case.

(a) *General.* If a case is certified to the Appeals Council by a hearing examiner (see § 410.654), the Appeals Council shall make a decision. If the Appeals Council decides to review a hearing examiner's decision as provided in § 410.662, the Appeals Council may, upon such review, affirm, modify, or reverse the decision of the hearing examiner, or vacate such decision and remand the case to a hearing examiner either for rehearing and the issuance of a decision thereon

or to take further testimony in the case and return it to the Appeals Council with a recommended decision for decision by the Appeals Council. Where a case has been remanded by a court for further consideration, the Appeals Council may proceed then to make the decision or it may in turn remand the case to a hearing examiner with directions to return the case upon completion of the necessary action to the Appeals Council with a recommended decision for decision by the Appeals Council.

(b) *Case remanded to hearing examiner.* Where a case is remanded to a hearing examiner, he shall initiate such additional proceedings and take such other action (under §§ 410.632 through 410.655) as is directed by the Appeals Council in its order of remand. The hearing examiner may take any additional action not inconsistent with the order of remand. Upon completion of all action called for by the order of remand and any other action initiated by the hearing examiner, the hearing examiner shall promptly (1) issue a decision in writing which contains findings of fact and a statement of reasons, or (2) when so directed by the Appeals Council, return the case with his recommended decision to the Appeals Council for its decision. A copy of the decision shall be mailed to each party at his last known address. When a recommended decision is issued, the hearing examiner shall also notify each party of his right to file with the Appeals Council within 10 days from the the date of mailing of the recommended decision, briefs or other written statements of exceptions and allegations as to applicable fact and law, except in the case of suspension or disqualification (see § 410.694(b)). Upon request of any party made within such 10-day period, a 10-day extension of time for filing such briefs or statements shall be granted and, upon a showing of good cause, such 10-day period may be extended, as appropriate.

(c) *Decision by Appeals Council.* A decision of the Appeals Council shall be based upon the evidence received into the hearing record and such further evidence as the Appeals Council may receive as provided in §§ 410.657, 410.658, 410.663, and 410.664. This decision shall be made in writing and contain findings of fact, and a statement of reasons. A copy of the decision shall be mailed to each party at his last known address.

§ 410.666 Effect of Appeals Council's decision or refusal to review.

The Appeals Council may deny a party's request for review or it may grant review and either affirm or reverse the hearing examiner's decision. The decision of the Appeals Council, or the decision of the hearing examiner where the request for review of such decision is denied (see § 410.662), shall be final and binding upon all parties to the hearing unless to the extent permitted by the provisions of section 413(b) of the Act (see § 410.670a), a civil action is filed in a district court of the United States, or unless the decision is revised under the provisions described in § 410.671.

§ 410.667 Dismissal by Appeals Council.

The Appeals Council may dismiss a request for review or proceedings before it under any of the following circumstances:

(a) *Upon request of party.* Proceedings pending before the Appeals Council may, with the approval of the Appeals Council, be discontinued and dismissed upon written application of the party or parties who filed the request for review to withdraw such request.

(b) *Death of party.* Proceedings before the Appeals Council, whether on request for review or review on the motion of the Appeals Council, may be dismissed upon the death of a party only if the record affirmatively shows that there is no prejudiced individual who wishes to continue the action.

(c) *Request for review not timely filed.* A request for review of a decision by a hearing examiner shall be dismissed where the party has failed to file a request for review within the time specified in § 410.661 and the time for filing such request has not been extended as provided in § 410.669.

§ 410.668 Extension of time to request reconsideration.

If a party to an initial determination desires to file a request for reconsideration after the time for filing such request has passed (see § 410.624), such party may file a petition with the Administration for an extension of time for the filing of such request. Such petition shall be in writing and shall state the reasons why the request for reconsideration was not filed within the required time. For good cause shown, the component of the Administration which has jurisdiction over the proceedings (see § 410.601) may extend the time for filing the request for reconsideration.

§ 410.669 Extension of time to request hearing or review or begin civil action.

(a) *General.* Any party to a reconsidered determination, a decision of a hearing examiner, or a decision of the Appeals Council (resulting from an initial determination as described in § 410.610), may petition for an extension of time for filing a request for hearing or review or, with respect to that portion of a decision that holds that a miner is not totally disabled due to pneumoconiosis or did not die due to pneumoconiosis (see § 410.670a), for commencing a civil action in a district court of the United States, although the time for filing such request or commencing such action has passed. If an extension of the time fixed by § 410.631 for requesting a hearing before a hearing examiner is sought, the petition may be filed with a hearing examiner. In any other case, the petition shall be filed with the Appeals Council. The petition shall be in writing and shall state the reasons why the request or action was not filed within the required time. For good cause shown, a hearing examiner or the Appeals Council, as the case may be, may extend the time for filing such request or action.

(b) *Where civil action commenced against wrong defendant.* If a party to a decision of the Appeals Council, or to a decision of the hearing examiner where the request for review of such decision is denied (see § 410.662), timely commences in a proper case (see § 410.670a), a civil action in a district court of the United States pursuant to section 413(b) of the Act, but names as defendant the United States or any agency, officer, or employee thereof instead of the Secretary either by name or by official title, and causes process to be served in such action as required by the Federal Rules of Civil Procedure, the Administration shall mail notice to such party that he has named the incorrect defendant in such action; and the time within which such party may commence the civil action against the Secretary pursuant to section 413(b) of the Act shall be deemed to be extended to and including the 60th day following the date of mailing of such notice.

§ 410.670 Review by Appeals Council.

Where a hearing examiner has determined the matter of extending the time for filing such request (whether he has allowed or denied the request for such extension), the Appeals Council on its own motion may review such determination and either affirm or reverse it. In connection with this review, the Appeals Council may consider whatever additional evidence relevant to this request a party may wish to present.

§ 410.670a Judicial review.

Under the Act, a civil action may be commenced in a district court of the United States with respect to a decision of the Appeals Council, or to a decision of the hearing examiner where the request for review of such decision is denied by the Appeals Council, only to the extent that it holds that a miner is not totally disabled due to pneumoconiosis as defined in § 410.110(o) or did not die due to pneumoconiosis as so defined.

§ 410.671 Revision for error or other reason; time limitation generally.

(a) *Initial, revised or reconsidered determination.* Except as otherwise provided in § 410.675, an initial, revised or reconsidered determination (see §§ 410.610 and 410.627) may be revised by the appropriate component of the Administration having jurisdiction over the proceedings (§ 410.601), on its own motion or upon the petition of any party for a reason, and within the time period, prescribed in § 410.672.

(b) *Decision or revised decision of a hearing examiner or the Appeals Council.* Either upon the motion of the hearing examiner or the Appeals Council, as the case may be, or upon the petition of any party to a hearing, except as otherwise provided in § 410.675, any decision of a hearing examiner provided for in § 410.654 or any revised decision may be revised by such hearing examiner, or by another hearing examiner if the hearing examiner who issued the decision is unavailable, or by the Appeals Council for a reason and within the time period prescribed in § 410.672. Any decision of the

Appeals Council provided for in § 410.665 or any revised decision of the Appeals Council, may be revised by the Appeals Council for a reason and within the time period prescribed in § 410.672. For the purpose of this paragraph (b), a hearing examiner shall be considered to be unavailable if among other circumstances, such hearing examiner has died, terminated his employment, is on leave of absence, has had a transfer of official station, or is unable to conduct a hearing because of illness.

§ 410.672 Reopening initial, revised or reconsidered determinations of the Administration and decisions of a hearing examiner or the Appeals Council; finality of determinations and decisions.

An initial, revised or reconsidered determination of the Administration or a decision, or revised decision of a hearing examiner or of the Appeals Council which is otherwise final under § 410.621, § 410.629, § 410.655, or § 410.666 may be reopened:

(a) Within 12 months from the date of the notice of the initial determination (see § 410.620), to the party to such determination, or

(b) After such 12-month period, but within 4 years after the date of the notice of the initial determination (see § 410.620) to the party to such determination, upon a finding of good cause for reopening such determination or decision, or

(c) At any time, when:

(1) Such initial, revised, or reconsidered determination or decision was procured by fraud or similar fault of the claimant or some other person; or

(2) An adverse claim has been filed; or

(3) An individual previously determined to be dead, and on whose account entitlement of a party was established, is later found to be alive; or

(4) The death of the individual on whose account a party's claim was denied for lack of proof of death is established by reason of his unexplained absence from his residence for a period of 7 years (see § 410.240(g)(2)); or

(5) Such initial, revised, or reconsidered determination or decision is unfavorable, in whole or in part, to the party thereto but only for the purpose of correcting clerical error or error on the face of the evidence on which such determination or decision was based.

§ 410.673 Good cause for reopening a determination or decision.

"Good cause" shall be deemed to exist where:

(a) New and material evidence is furnished after notice to the party to the initial determination;

(b) A clerical error has been made in the computation of benefits;

(c) There is an error as to such determination or decision on the face of the evidence on which such determination or decision is based.

§ 410.674 Finality of suspension of benefit payments for entire taxable year because of earnings.

Notwithstanding the provisions in § 410.672, a suspension of benefit payments for an entire taxable year because of earnings therein, may be reopened only within the time period and subject to the conditions provided in section 203(h)(1)(B) of the Social Security Act.

§ 410.675 Time limitation for revising finding suspending benefit payments for entire taxable year because of earnings.

No determination of the Administration or decision of a hearing examiner or the Appeals Council shall be revised after the expiration of the normal period for requesting reconsideration, hearing or review, with respect to such determination or decision (see §§ 410.624, 410.631, 410.661, and 410.666) to correct a finding which suspends benefit payments for an entire taxable year because of earnings therein, unless the correction of such finding is permitted under section 203(h)(1)(B) of the Social Security Act.

§ 410.676 Notice of revision.

(a) When any determination or decision is revised, as provided in § 410.671 or § 410.675, notice of such revision shall be mailed to the parties to such determination or decision at their last known addresses. The notice of revision which is mailed to the parties shall state the basis for the revised decision.

(b) Where a determination of the Administration is revised under paragraph (a) of this section, the notice of revision shall inform the parties of their right to a hearing as provided in § 410.678.

(c) (1) Where a hearing examiner or the Appeals Council proposes to revise a decision under paragraph (a) of this section and the revision would be based on evidence theretofore not included in the record on which the decision proposed to be revised was based, the parties shall be given notice of the proposal of the hearing examiner or the Appeals Council, as the case may be, to revise such decision, and unless hearing is waived, a hearing with respect to such proposed revision shall be granted as provided in this Subpart F.

(2) If a revised decision is appropriate, such decision shall be rendered by the hearing examiner or the Appeals Council, as the case may be, on the basis of the entire record, including the additional evidence. If the decision is revised by a hearing examiner, any party thereto may request review by the Appeals Council (§§ 410.660 and 410.661) or the Appeals Council may review the decision on its own motion (§ 410.662).

§ 410.677 Effect of revised determination.

The revision of a determination or decision shall be final and binding upon all parties thereto unless a party authorized to do so (see § 410.676) files a written request for a hearing with respect to a revised determination in accordance with § 410.678 or a revised decision is reviewed by the Appeals Council as provided in this Subpart F, or such revised determination or decision is further revised in accordance with § 410.672.

§ 410.678 Time and place of requesting hearing on revised determination.

The request for hearing shall be made in writing and filed at an office of the Administration, or with a hearing examiner, or the Appeals Council, within 6 months of the date notice was mailed to the party of the Administration's revised determination. Upon the filing of such a request, a hearing with respect to such revision shall be held (see §§ 410.631–410.653) and a decision made in accordance with the provisions of § 410.654.

§ 410.679 Finality of findings with respect to other claims for benefits based on the disability or death of a miner.

Findings of fact made in a determination or decision in a claim by one party for benefits may be revised in determining or deciding another claim for benefits based on the disability or death of the same miner, even though such findings may not be revised in the former claim because of the provisions of § 410.672.

§ 410.680 Imposition of reductions.

The imposition of reductions constitutes an initial determination with respect to each month for which a reduction is imposed. A finding that a reduction is not to be imposed is an initial determination for each month with respect to which the circumstances upon which such finding was based remain unchanged. The suspension of benefits, pending a determination as to the applicability of a reduction equivalent to the amount of a deduction because of excess earnings under section 203(b) of the Social Security Act shall not, however, constitute an initial determination (see § 410.615(a)).

§ 410.681 Change of ruling or legal precedent.

"Good cause" shall be deemed not to exist where the sole basis for reopening the determination or decision is a change of legal interpretation or administrative ruling upon which such determination or decision was made.

§ 410.682 General applicability.

The provisions of §§ 410.672, 410.673, and 410.679 to 410.681, inclusive, shall be applicable notwithstanding any provisions to the contrary in this Subpart F.

§ 410.683 Certification of payment; determination or decision providing for payment.

When a determination or decision has been made under any provision of §§ 410.610 to 410.678, inclusive, to the effect that a payment or payments of benefits should be made to any person, the Administration shall, except as hereafter provided, certify to the U.S. Treasury Department the name and address of the person to be paid, the amount of the payment or payments and

the time at which such payment or payments should be made.

§ 410.684 Representation of party; appointment of representative.

A party in an action leading to an initial or reconsidered determination, hearing, or review, as provided in §§ 410.610 to 410.678, inclusive, may appoint as his representative in any such proceeding only an individual who is qualified under § 410.685 to act as a representative. Where the individual appointed by a party to represent him is not an attorney, written notice of the appointment must be given, signed by the party appointing the representative, and accepted by the representative appointed. The notice of appointment shall be filed at an office of the Administration, with a hearing examiner, or with the Appeals Council of the Administration, as the case may be. Where the representative appointed is an attorney, in the absence of information to the contrary, his representation that he has such authority, shall be accepted as evidence of the attorney's authority to represent a party.

§ 410.685 Qualifications of representative.

(a) *Attorney.* Any attorney in good standing who (1) is admitted to practice before a court of a State, Territory, District or insular possession or before the Supreme Court of the United States or an inferior Federal court and (2) is not, pursuant to any provision of law, prohibited from acting as a representative, may be appointed as a representative in accordance with § 410.684.

(b) *Person other than attorney.* Any person (other than an attorney described in paragraph (a) of this section) who (1) is of good character, in good repute, and has the necessary qualifications to enable him to render valuable assistance to an individual in connection with his claim, (2) has not been disqualified or suspended from acting as a representative in proceedings before the Social Security Administration, and (3) is not, pursuant to any provision of law, otherwise prohibited from acting as a representative, may be appointed as a representative in accordance with § 410.684.

§ 410.686 Authority of representative.

A representative, appointed and qualified as provided in §§ 410.684 and 410.685, may make or give, on behalf of the party he represents, any request or notice relative to any proceeding before the Administration under part B of title IV of the Act, including reconsideration, hearing and review, except that such representative may not execute a claim for benefits, unless he is a person designated in § 410.222 as authorized to execute a claim. A representative shall be entitled to present or elicit evidence and allegations as to facts and law in any proceeding affecting the party he represents and to obtain information with respect to the claim of such party to the same extent as such party. Notice to any party of any administrative action, determination, or decision, or request to any party for the production of evidence may be sent to the representative of such party, and such notice or request shall have the same force and effect as if it had been sent to the party represented.

§ 410.687 Rules governing the representation and advising of claimants and parties.

No representative shall:

(a) Knowingly make any false statement, representation, or certification in any application, record, report, or other document submitted in connection with any claim under the Act; or

(b) Divulge, except as may be authorized by regulations now or hereafter prescribed by the Secretary, any information furnished or disclosed to him by the Administration relating to the claim or prospective claim of another person (see § 410.120).

§ 410.688 Disqualification or suspension of an individual from acting as a representative in proceedings before the Administration.

Whenever it appears that an individual has violated any of the rules in § 410.687, or has otherwise refused to comply with the Secretary's rules and regulations governing representation of claimants before the Administration, the Deputy Commissioner, or the Director (or Deputy Director) of the Bureau of Retirement and Survivors Insurance of the Administration may institute proceedings as herein provided to suspend or disqualify such individual from acting as a representative in proceedings before the Administration.

§ 410.689 Notice of charges.

The Deputy Commissioner, or the Director (or Deputy Director) of the Bureau of Retirement and Survivors Insurance of the Administration will prepare a notice containing a statement of charges that constitutes the basis for the proceeding against the individual. This notice will be delivered to the individual charged, either by certified or registered mail to his last known address or by personal delivery, and will advise the individual charged to file an answer, within 30 days from the date the notice was mailed, or was delivered to him personally, indicating why he should not be suspended or disqualified from acting as a representative before the Administration. This 30-day period may be extended for good cause shown, by the Deputy Commissioner, or the Director (or Deputy Director) of the Bureau of Retirement and Survivors Insurance. The answer must be in writing under oath (or affirmation) and filed with the Social Security Administration, Bureau of Hearings and Appeals, Post Office Box 2518, Washington, DC 20013, with a copy to the Bureau of Retirement and Survivors Insurance, 6401 Security Boulevard, Baltimore, MD 21235, within the prescribed time limitation. If an individual charged does not file an answer within the time prescribed, he shall not have the right to present evidence. However, see § 410.692(f) relating to statements with respect to sufficiency of the evidence upon which the charges are based or challenging the validity of the proceedings.

§ 410.690 Withdrawal of charges.

If an answer is filed or evidence is obtained that establishes, to the satisfaction of the Deputy Commissioner, or the Director (or Deputy Director) of the Bureau of Retirement and Survivors Insurance of the Administration, that reasonable doubt exists about whether the individual charged should be suspended or disqualified from acting as a representative before the Administration, the charges may be withdrawn. The notice of withdrawal shall be mailed to the individual charged at his last known address.

§ 410.691 Referral to Bureau of Hearings and Appeals for hearing and decision.

If action is not taken to withdraw the charges before the expiration of 15 days after the time within which an answer may be filed, the record of the evidence in support of the charges shall be referred to the Bureau of Hearings and Appeals of the Administration with a request for a hearing and a decision on the charges.

§ 410.692 Hearing on charges.

(a) *Hearing officer.* Upon receipt of the notice of charges, the record, and the request for hearing (see § 410.691), the Director, Bureau of Hearings and Appeals of the Administration or his delegate shall designate a hearing examiner to act as a hearing officer to hold a hearing on the charges. No hearing officer shall conduct a hearing in a case in which he is prejudiced or partial with respect to any party or where he has any interest in the matter pending for decision before him. Notice of any objection which a party to the hearing may have to the hearing officer who has been designated to conduct the hearing shall be made at the earliest opportunity. The hearing officer shall consider the objection(s) and shall, in his discretion, either proceed with the hearing or withdraw. If the hearing officer withdraws, another hearing officer shall be designated as provided in this section to conduct the hearing. If the hearing officer does not withdraw, the objecting party may, after the hearing, present his objections to the Appeals Council as reason why he believes the hearing officer's decision should be revised or a new hearing held before another hearing officer.

(b) *Time and place of hearing.* The hearing officer shall notify the individual charged and the Deputy Commissioner, or the Director (or Deputy Director) of the Bureau of Retirement and Survivors Insurance of the Administration, of the time and place for a hearing on the charges. The notice of the hearing shall be mailed to the individual charged at his last known address and to the Deputy Commissioner, or the Director (or Deputy Director) of the

Bureau of Retirement and Survivors Insurance, not less than 20 days prior to the date fixed for the hearing.

(c) *Change of time and place for hearing.* The hearing officer may change the time and place for the hearing (see paragraph (b) of this section) either on his own motion or at the request of a party for good cause shown. The hearing officer may adjourn or postpone the hearing, or he may reopen the hearing for the receipt of additional evidence at any time prior to the mailing of notice of the decision in the case (see § 410.693). Reasonable notice shall be given to the parties of any change in the time or place of hearing or of any adjournment or reopening of the hearing.

(d) *Parties.* A person against whom charges have been preferred under the provisions of § 410.688 shall be a party to the hearing. The Deputy Commissioner, or the Director (or Deputy Director) of the Bureau of Retirement and Survivors Insurance of the Administration, shall also be a party to the hearing.

(e) *Conduct of the hearing.* The hearing shall be open to the parties and to such other persons as the hearing officer or the individual charged deems necessary or proper. The hearing officer shall inquire fully into the matters at issue and shall receive in evidence the testimony of witnesses and any documents which are relevant and material to such matters: *Provided, however,* That if the individual charged has filed no answer he shall have no right to present evidence but in the discretion of the hearing officer may appear for the purpose of presenting a statement of his contentions with regard to the sufficiency of the evidence or the validity of the proceedings upon which his suspension or disqualification, if it occurred, would be predicated or, in his discretion, the hearing officer may make or recommend a decision (see § 410.693) on the basis of the record referred in accordance with § 410.691. If the individual has filed an answer and if the hearing officer believes that there is relevant and material evidence available which has not been presented at the hearing, the hearing officer may at any time prior to the mailing of notice of the decision, or submittal of a recommended decision, reopen the hearing for the receipt of such evidence. The order in which the evidence and the allegations shall be presented and the conduct of the hearing shall be at the discretion of the hearing officer.

(f) *Evidence.* Evidence may be received at the hearing, subject to the provision herein, even though inadmissible under the rules of evidence applicable to court procedure. The hearing officer shall rule on the admissibility of evidence.

(g) *Witnesses.* Witnesses at the hearing shall testify under oath or affirmation. The witnesses of a party may be examined by such party or by his representative, subject to interrogation by the other party or by his representative. The hearing officer may ask such questions as he deems necessary. He shall rule upon any objection made by either party as to the propriety of any question.

(h) *Oral and written summation.* The parties shall be given, upon request, a reasonable time for the presentation of an oral summation and for the filing of briefs or other written statements of proposed findings of fact and conclusions of law. Copies of such briefs or other written statements shall be filed in sufficient number that they may be made available to any party in interest requesting a copy and to any other party designated by the Appeals Council.

(i) *Record of hearing.* A complete record of the proceedings at the hearing shall be made and transcribed in all cases.

(j) *Representation.* The individual charged may appear in person and he may be represented by counsel or other representative.

(k) *Failure to appear.* If after due notice of the time and place for the hearing, a party to the hearing fails to appear and fails to show good cause as to why he could not appear, such party shall be considered to have waived his right to be present at the hearing. The hearing officer may hold the hearing so that the party present may offer evidence to sustain or rebut the charges.

(l) *Dismissal of charges.* The hearing officer may dismiss the charges in the event of the death of the individual charged.

(m) *Cost of transcript.* On the request of a party, a transcript of the hearing before the hearing officer will be prepared and sent to the requesting party upon the payment of cost, or if the cost is not readily determinable, the estimated amount, thereof, unless for good cause such payment is waived.

§ 410.693 Decision by hearing officer.

(a) *General.* As soon as practicable after the close of the hearing, the hearing officer shall issue a decision (or certify the case with a recommended decision to the Appeals Council for decision under the rules and procedures described in §§ 410.657 through 410.659) which shall be in writing and contain findings of fact and conclusions of law. The decision shall be based upon the evidence of record. If the hearing officer finds that the charges have been sustained, he shall either:

(1) Suspend the individual for a specified period of not less than 1 year, nor more than 5 years, from the date of the decision, or

(2) Disqualify the individual from further practice before the Administration until such time as the individual may be reinstated under § 410.699.

A copy of the decision shall be mailed to the individual charged at his last known address and to the Deputy Commissioner, or the Director (or Deputy Director) of the Bureau of Retirement and Survivors Insurance, together with notice of the right of either party to request the Appeals Council to review the decision of the hearing officer.

(b) *Effect of hearing officer's decision.* The hearing officer's decision shall be final and binding unless reversed or modified by the Appeals Council upon review (see § 410.697).

(1) If the final decision is that the individual is disqualified from practice before the Administration, he shall not be permitted to represent an individual in a proceeding before the Administration until authorized to do so under the provisions of § 410.699.

(2) If the final decision suspends the individual for a specified period of time, he shall not be permitted to represent an individual in a proceeding before the Administration during the period of suspension unless authorized to do so under the provisions of § 410.699.

§ 410.694 Right to request review of the hearing officer's decision.

(a) *General.* After the hearing officer has issued a decision, either of the parties (see § 410.692) may request the Appeals Council to review the decision.

(b) *Time and place of filing request for review.* The request for review shall be made in writing and filed with the Appeals Council within 30 days from the date of mailing the notice of the hearing officer's decision, except where the time is extended for good cause. The requesting party shall certify that a copy of the request for review and of any documents that are submitted therewith (see § 410.695) have been mailed to the opposing party.

§ 410.695 Procedure before Appeals Council on review of hearing officer's decision.

The parties shall be given, upon request, a reasonable time to file briefs or other written statements as to fact and law and to appear before the Appeals Council for the purpose of presenting oral argument. Any brief or other written statement of contentions shall be filed with the Appeals Council, and the presenting party shall certify that a copy has been mailed to the opposing party.

§ 410.696 Evidence admissible on review.

(a) *General.* Evidence in addition to that introduced at the hearing before the hearing officer may not be admitted except where it appears to the Appeals Council that the evidence is relevant and material to an issue before it and subject to the provisions in this section.

(b) *Individual charged filed answer.* Where it appears to the Appeals Council that additional relevant material is available and the individual charged filed an answer to the charges (see § 410.689), the Appeals Council shall require the production of such evidence and may designate a hearing officer or member of the Appeals Council to receive such evidence. Before additional evidence is admitted into the record, notice that evidence will be received with respect to certain issues shall be mailed to the parties, and each party shall be given a reasonable opportunity to comment on such evidence and to present other evidence which is relevant and material to the issues unless such notice is waived.

(c) *Individual charged did not file answer.* Where the individual charged filed no answer to the charges (see § 410.689), evidence in addition to that introduced at the hearing before the hearing officer may not be admitted by the Appeals Council.

§ 410.697 Decision by Appeals Council on review of hearing officer's decision.

The decision of the Appeals Council shall be based upon evidence received into the hearing record (see § 410.692(i)) and such further evidence as the Appeals Council may receive (see § 410.696) and shall either affirm, reverse, or modify the hearing officer's decision. The Appeals Council, in modifying a hearing officer's decision suspending the individual for a specified period shall in no event reduce a period of suspension to less than 1 year, or in modifying a hearing officer's decision to disqualify an individual shall in no event impose a period of suspension of less than 1 year. Where the Appeals Council affirms or modifies a hearing officer's decision, the period of suspension or disqualification shall be effective from the date of the Appeals Council's decision. Where a period of suspension or disqualification is initially imposed by the Appeals Council, such suspension or disqualification shall be effective from the date of the Appeals Council's decision. The decision of the Appeals Council will be in writing and a copy of the decision will be mailed to the individual at his last known address and to the Deputy Commissioner, or the Director (or Deputy Director) of the Bureau of Retirement and Survivors Insurance.

§ 410.698 Dismissal by Appeals Council.

The Appeals Council may dismiss a request for the review of any proceedings instituted under § 410.688 pending before it in any of the following circumstances:

(a) *Upon request of party.* Proceedings pending before the Appeals Council may be discontinued and dismissed upon written application of the party or parties who filed the request for review provided there is no party who objects to discontinuance and dismissal.

(b) *Death of party.* Proceedings before the Appeals Council may be dismissed upon death of a party against whom charges have been preferred.

(c) *Request for review not timely filed.* A request for review of a hearing officer's decision shall be dismissed when the party has failed to file a request for review within the time specified in § 410.694 and such time is not extended for good cause.

§ 410.699 Reinstatement after suspension or disqualification.

(a) *General.* An individual shall be automatically reinstated to serve as representative before the Administration at the expiration of any period of suspension. In addition, after 1 year from the effective date of any suspension or disqualification, an individual who has been suspended or disqualified from acting as a representative in proceedings before the Administration may petition the Appeals Council for reinstatement prior to the expiration of a period of suspension or following a disqualification order. The petition for reinstatement shall be accompanied by any evidence the individual wishes to submit. The Appeals Council shall notify the Deputy Commissioner, or the Director (or Deputy Director) of the Bureau of Retirement and Survivors Insurance, of the receipt of the petition and grant him 30 days in which to present a written report of any experiences which the Administration may have had with the suspended or disqualified individual during the period subsequent to the suspension or disqualification. A copy of any such report shall be made available to the suspended or disqualified individual.

(b) *Basis of action.* A request for revocation of a suspension or a disqualification shall not be granted unless the Appeals Council is reasonably satisfied that the petitioner is not likely in the future to conduct himself contrary to the provisions of the rules and regulations of the Administration.

(c) *Notice.* Notice of the decision on the request for reinstatement shall be mailed to the petitioner and a copy shall be mailed to the Deputy Commissioner, or the Director (or Deputy Director) of the Bureau of Retirement and Survivors Insurance.

(d) *Effect of denial.* If a petition for reinstatement is denied, a subsequent petition for reinstatement shall not be considered prior to the expiration of 1 year from the date of notice of the previous denial.

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PART III

SMALL BUSINESS ADMINISTRATION

■

SMALL BUSINESS INVESTMENT COMPANIES

Proposed Relaxation of Certain Restrictions

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 107]

SMALL BUSINESS INVESTMENT COMPANIES

Notice of Proposed Rule Making

Notice is hereby given that pursuant to authority contained in section 308 of the Small Business Investment Act of 1958, as amended, 15 U.S.C. 687, it is proposed to amend, as set forth below, Part 107 of Subchapter B, Chapter I, of Title 13 of the Code of Federal Regulations, as revised in 33 F.R. 326, and amended in 33 F.R. 11147, 33 F.R. 20035, 34 F.R. 1234, 5796, 35 F.R. 4596, 11462 and 36 F.R. 18858, by amending §§ 107.1102(d) (1) and (2), 107.1104 and Appendices 1 and 2. Prior to final adoption of such amendments consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in triplicate, to the Office of Investment, Small Business Administration, Washington, D.C. 20416, within a period of 20 days from the date of publication of this notice in the FEDERAL REGISTER.

Information Proposed Amendment 8 to Revision 4 set forth below comprehends the following principal changes:

(1) Addition to SBA Form 468 of new financial statement titled "Statement of Changes in Financial Position", it will appear on page 5 of SBA Form 468;

(2) Elimination of the requirement that SBIC's file a 6-month unaudited financial report on SBA Form 468; (3) authorization of a loss-deductible clause of up to $1,000 in SBIC fidelity bonds; (4) elimination of the standard fiscal year for SBICs and (5) elimination of all public accountants other than Certified Public Accountants from making audits of SBICs after December 31, 1975, except that public accountants licensed prior to December 31, 1971, would be similarly qualified.

1. Paragraphs (d) (1) and (2) of § 107.1102 are amended to read as follows:

§ 107.1102 Records and reports.

* * * * *

(d) Financial reports to SBA:

(1) Each Licensee shall submit to SBA, at the end of each fiscal year a report containing financial statements for the fiscal year; and, when requested by SBA, interim financial reports.

(2) The report as of the end of each fiscal year shall contain, or be accompanied by an independent public accountant's opinion on the financial statements for the fiscal year included therein. Such opinion shall be based on an audit of the accounts of the Licensee conducted in accordance with generally accepted auditing standards, and in accordance with the Audit and Examination Guide for Small Business Investment Companies prescribed by SBA, by an independent certified public accountant or an independent licensed public accountant, certified or licensed by a regulatory authority of a State or other political subdivision of the United States who has been approved by SBA Effective December 31, 1975, only a certified public accountant may be considered qualified to render an opinion as an independent public accountant on behalf of an SBIC except that those licensed public accountants who have received their licenses on or before December 31, 1971, will also be considered similarly qualified.

* * * * *

2. Paragraphs (a) and (b) of § 107.1104 are amended to read as follows:

§ 107.1104 Fidelity insurance.

(a) Each Licensee shall maintain a fidelity bond in the form and amount set forth in Addendum I (Fidelity Bond) to SBA's Audit and Examination Guide for Small Business Investment Companies.

(b) The Audit and Examination Guide for Small Business Investment Companies is printed in Appendix 1 as part of the regulations of this part.

* * * * *

3. Paragraph (c) of § 107.1104 is deleted.

4. It is proposed to adopt Appendices 1 and 2 of Part 107 as set forth below:

Dated: December 6, 1971.

THOMAS S. KLEPPE,
Administrator.

APPENDIX 1—AUDIT AND EXAMINATION GUIDE FOR SMALL BUSINESS INVESTMENT COMPANIES

FOREWORD

The Small Business Investment Act of 1958, as amended, expresses the declared policy of the Congress and purpose of the Act to improve and stimulate the national economy, and particularly the small business segment thereof, by establishing a program to stimulate and add to the flow of private equity capital and long-term loan funds which small business concerns need to finance their operations and assist in their growth, expansion, and modernization, and which are not available in the amounts required: "Provided; however, that this policy shall be carried out in such manner as to insure the maximum participation of private financing sources."

The Small Business Administration, in carrying out this policy, requests the cooperation of independent public accountants engaged in the practice of public accounting to participate in their own localities in the audit (financial examination) program for small business investment companies. It is desired that the audits of such companies performed by independent public accountants selected by the individual companies will be conducted with the uniformly high degree of competency which the profession has so long striven to maintain. Through the efficient, thorough, and economical performance of the audits, the best interests of the Licensee, the Small Business Administration, and the accounting profession will be served.

This Audit and Examination Guide for Small Business Investment Companies was initially prepared by the Small Business Administration with the advice of a committee of independent certified public accountants. It has been revised primarily to take account of amendments of the Small Business Investment Act and of the regulations governing small business investment companies. Any inquiries or comments relating to the examination of financial statements of small business investment companies, or to the auditing and reporting procedure as set forth in this Audit and Examination Guide should be directed to the Staff Accountant, Investment Division, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

GENERAL CONSIDERATIONS

The Small Business Administration, under authority granted by the Small Business Investment Act of 1958, as amended, requires small business investment companies licensed by SBA under the Act to have an audit (financial examination) made of their accounts and records annually by independent public accountants selected or approved by SBA. SBA requires that the engagement cover a "financial examination" type of audit described hereinafter. The annual audit shall be performed as of the close of each Licensee's fiscal year. Three copies of the annual audit report should be submitted to SBA as soon as practicable after completion and no later than the last day of the third month following the close of the period covered by the audit.

Any public accountant, certified or licensed by a regulatory authority of a State or other political subdivision of the United States, who is independent and who is duly authorized to practice as a public accountant, and is in good standing under the laws of the State or other comparable authority in which so authorized, may be considered qualified to render an opinion as an independent public accountant on behalf of an SBIC whose principal office is located in such State or authority. Effective December 31, 1975, only a certified public accountant may be considered qualified to render an opinion as an independent public accountant on behalf of an SBIC except that those licensed public accountants who have received their licenses on or before December 31, 1971, will also be considered similarly qualified.

The Small Business Administration will not recognize any public accountant as independent who is not in fact independent For example an accountant will be considered not independent with respect to any small business investment company with which he has, or had during the period covered by the audit (financial examination), any direct financial interest or any material indirect financial interest; or with which he is, or was during such period, connected as a promoter, underwriter, voting trustee, investment adviser, director, officer, or employee or in the capacity of rendering bookkeeping services. In determining whether an accountant may in fact be not independent with respect to a particular SBIC, SBA will give appropriate consideration to all relevant circumstances, including evidence bearing on all relationships between the accountant and such SBIC or any affiliate thereof, and will not confine itself to the relationships existing in connection with the filing of reports with this Agency.

The responsibility for the selection of the independent public accountant by the SBIC is vested in the board of directors. Any accountant qualifying as an independent public accountant, as explained above, may be considered as having SBA approval to perform the annual audit (financial examination) upon selection by the board, and the filing with SBA by such accountant of an executed IPA Statement. CO Form 112 (4-70), certifying as to his qualification and independence, unless otherwise advised by SBA. It is strongly recommended that the board give thorough consideration each year to the

matter of selecting the public accountant to perform that year's audit. The board under this policy selects an accountant with whom it agrees as to the engagement and basis of compensation. The SBIC then furnishes notification of the board's selection to the Staff Accountant, Investment Division, Small Business Administration, 1441 L Street NW., Washington, DC 20416. Notification to SBA is not necessary when the same accountant or accountants are retained for successive years.

This guide has been prepared, and made a part of the regulations, to inform Licensees under the Small Business Investment Act of 1958, as amended, and independent public accountants engaged by them as to SBA's minimum requirements concerning fidelity bonds, valuation of portfolio assets, and audits (financial examinations) of SBICs. It is not intended to be a complete manual of audit (financial examination) procedure, nor is it intended to supplant the accountant's judgment as to any additional work required to meet generally accepted auditing standards and to render adequate and appropriate reports. Through use of this guide by independent public accountants the Administration expects audits (financial examinations) of uniformly high quality to be made of all small business investment companies licensed by SBA.

The procedures set forth herein apply generally to a type of audit technically termed a "financial examination."

A financial examination is to be made in accordance with generally accepted auditing standards. The auditing procedures employed should include: (1) Review of the system of internal control and of the accounting principles followed; (2) independent sampling (through inspection, correspondence, etc.) to ascertain the existence of assets; (3) application of audit tests to determine that liabilities are reflected in the balance sheet; (4) review and testing of the income and expense accounts; (5) review of the accounting records, with application of appropriate testing procedures, to determine the authenticity and general reliability of the financial statements prepared from the accounts; and (6) such other auditing procedures as the independent public accountant considers necessary in the circumstances.

SBA has prescribed a system of account classifications which is required to be used by licensed small business investment companies. The Agency requires uniform reporting and contemplates that generally accepted auditing standards will be maintained. The attainment of accounting and reporting uniformity and the maintenance of auditing standards will provide reliable information for use by SBIC management and SBA. Accountants engaged by SBICs should become familiar with:

Small Business Investment Act of 1958, as amended.
Regulations governing small business investment companies issued pursuant to the Small Business Investment Act of 1958, as amended.
System of Account Classifications for Small Business Investment Companies (Part 111, SBA Rules and Regulations).
Financial Report, SBA Form 468.

REPORT OF AUDIT (FINANCIAL EXAMINATION)

General

The financial statements referred to in this guide are those constituting the Financial Report, SBA Form 468,[1] and should be prepared on such form. The accountant's examination should be directed toward the expression of an opinion as to whether the statements of (a) financial condition, (b) surplus reconciliations, (c) income and expense, (d) realized gains and losses on investments, and (e) changes in financial position, present fairly the financial position of the SBIC as of the audit date and the results of its operations for the period then ended in conformity with generally accepted accounting principles applied on a basis consistent with the preceding year. The schedules of SBA Form 468 should be subject to the audit procedures applied in the accountant's examination of the basic financial statements to enable him to express an opinion as to whether these schedules are fairly stated in all material respects in relation to the basic financial statements.

It is contemplated that a long-form audit report shall be rendered including the Financial Report, SBA Form 468 the accountant's opinion thereon and narrative comments relating to significant accounts and matters.

The accountant should, when possible, provide an unqualified opinion. In cases in which he considers it necessary to qualify or disclaim an opinion, the accountant should cite, when applicable the specific loans, investments or other items causing such qualification or disclaimer, and also state the specific factors involved which led to the qualification or disclaimer.

It is expected that all audit adjustments will be recorded in the SBIC's records before completion of the audit report, so that financial statements included in the audit report will agree with the books as adjusted to the balance sheet date, giving consideration to reclassifications of account balances for report purposes. If the adjustments are not on the books of the SBIC a statement should be made to this effect.

The accountant's comments should be concise and meaningful. Comments stereotyped as to expression on the basis of previous reports are to be avoided.

The agreement between the SBIC and the accountant with respect to the audit (financial examination) should provide that any information in the accountant's working papers will be made available upon request to the SBIC or to SBA.

Three copies of the audit report, with SBA Form 468, properly executed by the appropriate officers of the SBIC shall be submitted to SBA.

A copy of all adjusting journal entries recommended by the accountant should be attached to the inside of the back cover of each copy of the audit report submitted to SBA. Also attached to the inside of the back cover of each copy of the audit report should be a copy of any transmittal letter, special report, or similar communication furnished to the SBIC.

All SBIC audit reports submitted to SBA should be sent to: Investment Division, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

Accountant's Report (Certificate)

The accountant's report shall be dated, signed, and shall identify without detailed enumeration the financial statements covered by the report. The accountant's report shall state whether the audit was made in accordance with generally accepted auditing standards; and shall designate any auditing procedures generally recognized as acceptable or deemed necessary by the accountant under the circumstances of the particular case, which have been omitted, and the reasons for their omission. Nothing herein shall be construed to imply authority for the omission of any procedures which independent public accountants would ordinarily employ in the course of an audit made for the purpose of expressing the opinion required as stated hereinafter. The accountant's report shall (a) state clearly the opinion of the accountant as to the fairness with which the financial statements present the financial position of the Licensee at the audit date and the results of its operations for the period then ended in conformity with generally accepted accounting principles; (b) state whether the supplemental data contained in the schedules of SBA Form 468 have been subjected to the audit procedures applied in the examination of the basic financial statements and whether, in the accountant's opinion, these data are fairly stated in all material respects in relation to the basic financial statements; and (c) make reference to the consistent application of such principles or to any material changes in accounting principles or practices or method of applying the accounting principles or practices, which affect comparability of such financial statements with those of prior and future periods. Any matter to which the accountant takes exception shall be clearly identified, the exception thereto specifically and clearly stated, and, to the extent practicable, the effect of each such exception on the related financial statements given.

The independent public accountant is expected to satisfy himself as to the reasonableness of the bases used by SBIC's Board of Directors in determining the valuation of loans and investments as presented under the pertinent headings of this guide. The independent public accountant should determine and report in the narrative comments of his long-term report, whether the SBIC appears to have followed the valuation techniques and standards set forth in SBA Policy and Procedure Release No. 2006 dated December 31, 1965, in making the valuation. Except insofar as the valuations may affect the carrying values of investments shown on the financial statements, it shall be understood that the accountant's opinion on the financial statements contained in SBA Form 468 does not extend to the valuation of loans and investments given in the memorandum item after the end of the Statement of Financial Condition and in the memorandum columns of the applicable schedules.

Procedure for Reporting Irregularities

To meet its responsibilities SBA requires that the Investment Division be notified immediately in the event any apparent defalcation or other apparent criminal violation is disclosed. The examining accountant should determine that this has been done in every applicable case.

AUDIT OF ACCOUNTS AND REPORT OF AUDIT PROCEDURES AND FINDINGS

The audit (financial examination) referred to herein shall be conducted in accordance with generally accepted auditing standards and therefore shall include such tests of the accounting records and such other procedures as deemed necessary to enable the independent public accountant to render an opinion on the statements reported upon. Among the procedures to which particular attention should be given are the following:

Internal Control

It is expected that the independent public accountant will review the company's procedures and form an opinion on the effectiveness of the internal control. In determining the extent and nature of the testing and checking of certain accounts consideration should be given to existing internal control. It is important that the accountant set forth his observations on the effectiveness of internal control in the general comments section of his report, together with any suggestions he may have for improvement. The

[1] Filed as part of the original.

accountant may if he considers it more appropriate, report on internal control in a supplementary letter report rather than commenting thereon in the general comment section on this report.

Each Licensee is required to establish and maintain effective control arrangements covering its porfolio of investment securities, funds, and equipment. Dual control over disbursements of funds and withdrawals of securities from safekeeping, and the segregation of duties of employees represent key features of such arrangements.

Fidelity Bond

The independent public accountant should check the provisions of the SBIC's fidelity bond against the requirements of SBA as stated in Addendum I of this guide, and should comment in his report regarding the conformity of the bond to such requirements.

Minutes

The accountant should review the minutes, and determine that items of a financial nature have been adequately reflected in the financial statements, schedules and notes thereto. Where, in the accountant's opinion, material actions of the SBIC are not adequately covered by the minutes and items covered in the minutes are not reflected in the financial statements, appropriate disclosure should be made in the accountant's report.

Cash

Cash on hand should be counted. Cash in banks should be reconciled with book balances and confirmed by correspondence. In addition to bank statements at balance sheet date of the audit, the independent public accountant should request and utilize cutoff statements as of a subsequent date to permit determination of the disposition of outstanding checks, deposits in transit, and other reconciling items.

U.S. Government Obligations, Insured Savings, and Time Deposits

Temporary investments made from the company's general cash funds in direct and/or fully guaranteed U.S. Government obligations should be verified by inspection or, when applicable, by confirmation from custodians. Verification should include ascertainment that proper interest coupons are attached to bearer bonds. The recorded cost or, in the case of U.S. bonds, the current redemption value should be verified. The accountant should ascertain that registered bonds are in the name of the SBIC or endorsed so as to be transferable to the company, or are accompanied by powers of attorney.

Temporary investments of the company's general cash funds in savings institutions should be reconciled with book balances and confirmed by correspondence. Time certificates of deposits should be examined to verify the SBIC's ownership of time deposits and to ascertain correctness of the balances per books.

Notes and Accounts Receivable, and Allowance for Uncollectibles

Miscellaneous notes on hand should be examined and the details compared with the company's records. A representative number should be confirmed by correspondence with the makers.

Accounts receivable for services rendered participating companies, for commitment fees, for declared dividends and sharings in income, and for management consulting, investigation, appraisal, and related services rendered, as shown by subsidiary records, should be reconciled to control accounts. The same should be done with respect to receivables representing participating companies' portions of principal and accrued interest receivable from financed small business concerns.

The collectibility of notes and accounts receivable should be considered on the basis of the most reliable information the auditor can obtain. Such amounts due should be discussed with the executive officers of the company. Any contractual delinquency in payments to date should be given due consideration. Items considered uncollectible should be recommended for writeoff, and those of doubtful collectibility should be adequately provided for in the allowance for uncollectible notes and accounts receivable. If considered desirable, an adjusting entry to the allowance account should be recommended by the accountant for adoption by the SBIC. Comments concerning the adequacy of the allowance account should be included in the audit report.

Accrued Interest Receivable and Allowance for Uncollectibles

Determination should be made that interest receivable is currently and correctly accrued on the SBIC's records. This involves interest accrued on U.S. Government obligations, loans to and debt securities of small business concerns, notes receivable, sales contracts, and other interest-bearing amounts due from debtors.

Comments concerning the adequacy of the allowance for uncollectible interest receivable should be included in the audit report.

Due From Directors, Officers, and Employees

Advances made to directors, officers, and employees should be reviewed for proper authorization and recording, and should be commented on if not authorized or has been outstanding more than 6 months.

Funds in Escrow and Other Current Assets

Funds in escrow pending closing of financing for small business concerns should be confirmed. Miscellaneous current assets should be reviewed for authenticity and appropriateness of classification.

Loans, Debt Securities, Loans and Debt Securities, Securities Sold With Recourse, Allowances for Uncollectibles and Losses, and Unearned Discount, Fees, and Other Charges

The independent public accountant should review notes, mortgages, and other obligation documents evidencing loans granted under section 305 of the Small Business Investment Act, as amended, and should confirm directly with the makers the amount of the unpaid balances. Debt securities of small business concerns, purchased by the SBIC under provisions of section 304 of the Act, as amended, should be subjected to a similar review and confirmation. Either type of financing instruments obtained from other SBIC's through purchase or through exchange of portfolio securities should likewise be examined and confirmed with the issuers. All obligation documents should be checked for signing by authorized parties, including proper witnessing and acknowledgment, and for stated interest rate and term. Loans and debt securities pledged should be confirmed by correspondence with the holders. Determine if securities pledged are subject to SBA earmarking or nonhypothecation requirements and if so, that SBA has furnished written approval.

The System of Account Classifications provides for carrying loans and debt securities at their unpaid principal balances, including any related uncollected discounts, fees, or other charges. In the case of any such financings in which participations are sold to others, only the portion retained by the selling company is shown in the seller's books. Loans and debt securities are to be reported in the Statement of Financial Condition of SBA Form 468 on the same basis as recorded in the accounts.

Determination should be made that mortgages required to be recorded bear proper notation of such recording. The accountant should ascertain from such sources as the loan and debt security ledger cards or sheets, the collateral register, document files, minutes of board of directors' meetings, and statements of executive officers, what collateral documents should be on hand evidencing security for loans and debt securities, and should check for the presence of such collateral documents.

The accountant should inspect each participation agreement under which the company has purchased a participation interest in a loan or debt security, should inspect the documents evidencing such participation and should request confirmation from seller to the extent considered necessary. Similarly, amount reflected in subsidiary records as participations of others in loans and debt securities of the company under audit should be reviewed in relation to the pertinent participation agreements and confirmed with the purchasers to the extent warranted.

The amounts of loans and debt securities sold with recourse should be checked to the records of such sales and to the advices received from the purchasers as to payments made by the financed small business concerns.

The independent public accountant should review the current financial statements of the concerns which are financed by the SBIC and provide comments when considered significant relative to the financial position of the concern financed. When such financial statements of the concerns are not available the accountant shall so state in his report.

The board of directors of the SBIC has the responsibility of determining in good faith a realistic valuation for each specific loan and debt security, which shall be arrived at after consideration of all pertinent factors. Valuation techniques and standards for guidance of the board are set forth in SBA Policy and Procedural Release No. 2006. The independent public accountant should satisfy himself as to the reasonableness of the bases employed by the board of directors in making determinations of the value of loans and debt securities. No appreciation in value of debt securities is to be recorded in the books of account. The valuations as determined by the board of directors are to be shown in the memorandum column of the applicable schedule of the Financial Report, SBA Form 468.

The accountant should discuss all marginal loans and debt securities with the executive officers of the SBIC. Writeoffs should be recommended in instances in which the unpaid balances of loans and debt securities are considered uncollectible. The allowance for uncollectible loans and the allowance for losses on debt securities should be reviewed as to adequacy and commented upon in the report. If considered desirable, adjusting entries to the allowance accounts should be recommended by the accountant for adoption by the SBIC.

Special attention should be given by the accountant to verification of all amounts of unearned discount, fees, and other charges shown as deducted from the unpaid balances of loans and debt securities.

Capital Stock of Small Business Concerns; Warrants, Options, and Other Stock Rights Acquired from SBCs; and Allowances for Losses

All capital stock of small business concerns in the possession of the SBIC should be verified by inspection of the stock certificates. Similar capital stock on the books which is not in the possession of the company should be confirmed by direct correspondence with those having possession thereof. Capital stock of small business concerns is to be recorded on the books of the SBIC at cost. In the case of any such financings in which participations are sold to others, only the portion retained by the selling company is shown in the seller's books.

The independent public accountant should review the cost determinations made with respect to warrants, options, or other stock rights carried on the books at a monetary value. Only the selling company's portion of such stock rights is shown in its books when participations in the stock rights are sold to others.

The accountant should inspect the agreement and other documents evidencing each participation purchased, and should request confirmation from sellers to the extent considered necessary. Similarly, amounts reflected in subsidiary records as participations of others in capital stock and warrants, options, or other stock rights acquired by the company under audit should be reviewed in relation to the pertinent participation agreements and confirmed with the purchasers to the extent warranted.

It is the responsibility of the SBIC's board of directors to determine in good faith a realistic valuation for each capital stock investment and for warrants, options, or other stock rights for which a separate cost has been determined. This valuation shall be arrived at after consideration of all pertinent factors. Valuation techniques and standards for guidance of the board are set forth in SBA Policy and Procedural Release No. 2006. The independent public accountant should satisfy himself as to the reasonableness of the bases employed by the board of directors in making the value determinations. No appreciation in the value of capital stock or stock rights investments is to be recorded in the books of account. The valuations of the stock and stock rights as determined by the board of directors are to be shown in the memorandum column of the applicable schedule of the Financial Report, SBA Form 468.

The financial position and earnings of the financed small business concerns are important factors in the board of director's determination of the real value of the stock and stock rights issued by such concerns. The independent public accountants should review the current financial statements of the concerns which are financed by the SBIC and provide comments when considered significant relative to the financial position of the concern financed. When financial statements of the concerns are not available the accountant shall so state in his report. Any material decrease in value of capital stock or stock rights, as determined by the board of directors, that is not obviously of a transitory nature should be compensated for by an increase in the allowance for losses on capital stock of small business concerns, or in the allowance for losses on their warrants, options, and other stock rights, as appropriate. These allowance accounts should be reviewed as to adequacy by the accountant and commented upon in his report. An adjusting entry to effect any necessary increase should be recommended by the accountant for adoption by the company. Likewise, entries should be recommended to write off any established loss on capital stock of small business concerns or on stock rights of such concerns.

Venture Capital

Under the Small Business Investment Act of 1958, as amended, SBICs are entitled to borrow additional funds from SBA if they have a qualifying amount of combined paid-in capital and paid-in surplus and maintain a minimum percentage of total funds available for investment in small business concerns invested or committed in "venture capital," as defined in § 107.3 of the regulations. The independent public accountant, referring to the official definition of venture capital and reviewing the lending instruments and related documents, should determine that the total amount of venture capital as indicated in the Financial Report, SBA Form 468, is substantially correct.

Assets Acquired in Liquidation of Loans and Debt Securities, Accumulated Depreciation, Mortgages Payable, and Allowance for Losses

These assets may include a wide variety of things of value, as, for example, collateral notes receivable, accounts receivable, judgments, sheriffs' certificates, and various types of real and personal property. Property taken in liquidation should be recorded at an amount determined by the board of directors on the basis of bid-in-price, agreed consideration, or fair appraised value, as deemed most suitable: *Provided*, That the net amount recorded shall not exceed the total amount of the related loan or equity security indebtedness involved. In the case of mortgaged real property acquired in liquidation of loans and debt securities, the property should be recorded at gross value as determined by the board of directors, reduced as necessary to bring the net recorded value within the above-stated limitation. The amount of the existing mortgage or mortgages on such property should be shown as a deduction from the property acquired in liquidation on the asset side of the balance sheet. The accountant should verify each asset through application of procedures generally accepted for audit of the particular class of assets involved. Board authorization for recording these assets at the amounts shown should be ascertained. The amount recorded will correctly represent only the selling company's portion of any such assets in which participants are sold to others.

It is the board of directors' responsibility to determine in good faith a realistic valuation for each security or other item of property comprising assets acquired through liquidation of loans and debt securities. Such valuation shall be arrived at after consideration of all pertinent factors. Valuation techniques and standards or guidance of the board are set forth in SBA Policy and Procedural Release No. 2006. The independent public accountant should satisfy himself as to the reasonableness of the bases employed by the board in determining the values. No appreciation in the original recorded value of assets acquired in liquidation of loans and debt securities is to be recorded in the books of account. The valuations as determined by the board of directors are to be shown in the memorandum column of the applicable schedule of the Financial Report, SBA Form 468.

The accumulated depreciation on assets acquired in liquidation of loans and debt securities should be reviewed by the accountant to assure that it is not less in amount than a conservative estimate of the expired service life of such property while owned by the SBIC. Insurance coverage should be reviewed.

Such acquired assets should be discussed with the executive officers of the company. Writeoff should be recommended for items considered worthless. The allowance for losses on assets acquired in liquidation of loans and debt securities should be reviewed as to adequacy and commented upon in the report. If considered desirable, adjusting entries to the allowance account should be recommended by the accountant for adoption by the SBIC.

Amounts Due From Debtors on Sale of Assets Acquired in Liquidation of Loans and Debt Securities, Participation by Others, and Allowance for Uncollectibles

Accounts and notes receivable, sales contracts, mortgages, and similar evidences of indebtedness to the SBIC arising from the sale of assets acquired in liquidation of loans and debt securities, as shown by subsidiary records, should be reconciled to the control account. Current and past-due accounts receivable should be confirmed as the independent public accountant may deem appropriate, considering the relative significance of such accounts in the financial statements. The accountant should check all notes, sales contracts, mortgages, and other documents evidencing amounts due from debtors on sale of assets acquired in liquidation of loans and debt securities, and should confirm directly with the makers the unpaid balances of such of these obligations as he considers necessary. Sales contracts and mortgages should be examined to ascertain that such documents required to be recorded bear proper notation of recording.

The collectibility of the amounts due should be estimated on the basis of the most reliable information the auditor can obtain. Such amounts due should be discussed with the executive officers of the company. Any contractual delinquency in payments to date should be given due consideration. Items considered uncollectible should be recommended for write-off, and those of doubtful collectibility should be adequately provided for in the allowance for uncollectible amounts due from debtors on sale of assets acquired in liquidation of loans and debt securities. If considered desirable, an adjusting entry to the allowance account should be recommended by the accountant for adoption by the SBIC. Comments concerning the adequacy of the allowance account should be included in the audit report.

Corporate Premises Owned, Furniture and Equipment, and Accumulated Depreciation

The independent public accountant, during the first audit of the SBIC, should examine the documents showing title to the property owned as corporate premises. It should be ascertained that the land is carried at acquisition cost, plus the cost of subsequent benefit assessments and improvements (other than buildings and improvements related thereto), and that the charging of such additional costs to the land account has been proper. The building owned as a part of the corporate premises should be recorded at acquisition cost plus cost of subsequent improvements thereto. Improvements to leased property used as the company's office quarters should be recorded at cost. The basis for recorded cost should be verified and capital additions should be checked to ascertain that only properly capitalizable items have been added to book cost. Vouchers and invoices covering such additions should be examined. Retirements and sales should be reviewed to see that all transactions have been properly reflected in the accounts. Insurance coverage should be reviewed.

The accumulated depreciation on the building and related improvements owned as a part of the corporate premises should be

reviewed to assure that it is not less in amount than a conservative estimate of the expired service life of such building and improvements. The basis for amortization of leasehold improvements should be examined for appropriateness.

On occasion, an SBIC may be found operating in the same or communicating office or building with a bank or other financial institution. Sometimes both institutions are managed by the same individuals and the same facilities may be used for transacting business. The accountant should satisfy himself that safeguards are maintained which effectively segregate the books, records, and assets of the separate institutions at all times.

The accountant should ascertain that furniture and equipment, including automobiles, are recorded on the books at cost. Documents showing ownership of automobiles by the company should be inspected and invoices for all major additions to furniture and equipment during the audit period should be examined. Sales and trade-ins of furniture and equipment should be tested to determine that they have been appropriately recorded. Insurance coverage should be reviewed.

The accumulated depreciation on furniture and equipment, including automobiles, should be reviewed for adequacy.

The report should contain comments concerning unusual conditions, if any, found with respect to these assets.

Organization Costs

Legal fees, promotional expense, stock certificate costs, incorporation fees, taxes, and other charges which may comprise organization costs on the books should be audited for propriety as capital charges pending amortization or writeoff to the organization expense account. Following the first audit, the review of organization costs will ordinarily be concerned chiefly with a determination and evaluation of the basis for amortization and the consistency with which the planned elimination of this balance sheet item is being accomplished. The audit report comments on organization costs (at the first audit) should describe the components of this asset.

Other

Insurance prepayments, and other prepayments and deferred items should be reviewed. All significant items should be examined for propriety, for applicability to future periods, and for appropriateness of the basis for writeoff. Particular note should be taken of any amounts deferred as the result of improper accounting or failure to identify the correct purposes of the charges.

The audit report should contain adequate description of prepayments and deferred charges and should contain comments concerning any large or unusual amounts.

Miscellaneous assets of the company not included under other captions should be shown here. Miscellaneous assets should be reviewed for validity and for propriety of their retention on the books.

Accounts Payable

Accounts payable for participating companies' portions of principal and accrued interest receivable from financed small business concerns, compensation for services rendered on participations purchased, for commitment fees on deferred participations by others, and for other values received, as shown by subsidiary records, should be verified and reconciled to control accounts. The accruals of compensation payable and commitment fees payable should be reviewed with reference to the related participation agreements. Unusually large amounts and a reasonable proportion of other amounts due on open account should be confirmed by correspondence with the creditors.

Other Current and Accrued Liabilities

Subsidiary records on other current and accrued liabilities, including those for interest, salaries, taxes, dividends, unapplied receipts, trust receipts, amounts due directors, officers, and employees (other than salaries), and other deferred credits, should be checked and reconciled with the control accounts. A certificate, signed by an executive officer of the company, should be obtained stating that all actual liabilities have been entered in the books and that all existing contingent liabilities have been reported to the auditor. The accountant should communicate with the SBIC's attorney to determine the existence of any claims in litigation or pending against the company for the purpose of reporting any contingent liability.

The accountant should (following upon the fact) state in the report that certificates were received from the executive officer and the attorney concerning the recording of actual liabilities and the existence of any claims in litigation or pending against the company.

The report should also present pertinent information concerning unusual current and accrued liabilities. Special attention and comment should be directed to any amounts due directors, officers, and employees, and to any contingent liabilities, including commitments and guarantees.

Funds Borrowed and Other Liabilities

Indebtedness to SBA should be reconciled to the current statements from the Small Business Administration. Direct confirmation from SBA is required and should be requested on the basis of a statement, submitted in triplicate to the Director, Office of Budget and Finance, Small Business Administration, 1441 L Street NW., Washington, DC 20416, showing the unpaid balances of principal and interest at the balance sheet date of the audit. Adequate identification of each obligation, using execution date and SBA loan symbols, should be given.

Debt to others than SBA for funds borrowed likewise should be confirmed by correspondence. Loan agreements, contracts and mortgages, and minutes of board meetings pertaining thereto should be examined in relation to SBA financing and loans from others to determine whether there has been compliance with such of their terms as have direct bearing on the financial position as represented in the audited statements.

The other liabilities and deferred credits should be checked for validity. If these items are material in amount, appropriate comments thereon should be included in the report. Special attention and comment should be directed to any amounts due directors, officers, and employees, and to any contingent, liabilities, including commitments and guarantees.

The independent public accountant should ascertain that the appropriate schedule of the Financial Report, SBA Form 468, reflects all commitments, guaranteed obligations, and other contingent liabilities, and that the total of all contingent liabilities is shown as a footnote at the bottom of page 2 of SBA Form 468.

Capital Stock and Surplus

Verification of capital stock should be carried out by examination of the stock records and the stock certificate books, or by direct confirmation from the registrar and transfer agent, if applicable. Cash records or other records showing the consideration received for capital stock should be reviewed in connection with capital stock transactions during the period. Authorizations of the board of directors and also the charter and bylaws should be referred to. Determination should be made as to the existence of stock options, warrants, rights, conversion privileges, sales of stock on special terms, or reservations of shares of stock for sale to particular groups or for options and other rights. It should also be determined that all such transactions have been appropriately recorded and set forth in the statement of financial condition, notes thereto, or schedules as applicable. The independent public accountant should look for and disclose the existence of any arrearages in the payments on capital stock subscribed or in the payment of dividends on outstanding capital stock. Treasury stock transactions should be analyzed and determination made that appropriate accounting has been effected.

The audit report should contain thoroughly informative comments regarding capital stock transactions during the period.

Changes in the surplus accounts during the period should be reviewed for propriety of the accounting entries effecting the changes. Although all earnings for the year are ultimately transferred to a single retained earnings account, it should be determined that appropriate distinction has been made in classifying items in the Profit and Loss Summary and the Realized Gain and Loss Summary accounts as between (1) income and expense from operations and (2) realized gains and losses on investments. Paid-in surplus debits and credits must also be checked for appropriateness of classification.

Loans and Investments at Market or Fair Value

Review should be made of the valuation of loans and investments. The independent public accountant should determine whether the SBIC has followed the instructions for the memorandum item following the Statement of Financial Condition in SBA Form 468 in making the valuation.

Income and Expense and Gain and Loss Accounts

Appropriate tests should be made of income and expense and gain and loss accounts for the period under review. The test should be sufficient, when combined with information obtained in other phases of the audit, to satisfy the accountant that transactions summarized in these accounts are genuine and have been properly authorized and accurately recorded.

The verification procedures applied to income and expense and gain and loss accounts should be based on the same test-check principles as are applied to the balance sheet accounts. After examining representative transactions for the period or periods he has selected for testing, the accountant should scan the accounts and examine any entries which appear unusual. Special attention should be given to transactions contributing to the recorded gain or loss realized on sale of investments. In this connection, reference should be made to SBA requirements concerning the realization and use of income and gains, as set forth in Addendum II of this guide. A note to financial statements should include information as to the latest year through which Federal income tax returns of the SBIC have been audited by the Internal Revenue Service.

ADDENDUM I—FIDELITY BOND

1. NEED FOR BOND

Each Licensee shall obtain and maintain a fidelity bond which must be executed by

a surety holding a certificate of authority from the Secretary of the Treasury pursuant to sections 6–13 of title 6 of the United States Code as an acceptable surety on Federal bonds. Each officer and employee who has control over or access to cash, securities or other property of the Licensee shall be covered by such fidelity bond. The form of bond must meet the provisions of paragraphs 2 through 5 below.

2. TYPE OF BOND

The fidelity bond may be issued on a "Discovery" or "Loss Sustained" basis. Each bond shall contain minimum coverage equivalent to insuring agreements (A) Fidelity, (B) On Premises and (C) In Transit provided in Finance Companies Blanket Bond Standard Form 15 or Stockbrokers Blanket Bond Standard Form 14 both revised to September 1970. It should be clearly understood that eligible fidelity bonds are not restricted to Standard Forms 15 and 14. Equivalent insurance coverage as previously stated, constitutes satisfactory coverage. Insuring Agreements (D) Forgery or Alteration, (E) Securities and (F) Counterfeit Currency, misplacement coverage and Electronic Data Processing Coverage are not required. The bond shall also contain a rider or endorsement providing that the surety will notify SBA of its intent to cancel the fidelity bond at least 30 days in advance of the effective date of the cancellation. At the option of the Licensee a loss deductible clause not to exceed $1,000 will be permissible under all of the insuring agreements.

A Licensee, including abank owned or controlled Licensee, may be covered as a joint insured under a Fidelity Bond if the coverage meets the above requirements.

3. CANCELLATIONS AND CLAIMS BY THE LICENSEE

Each Licensee, at least 30 days prior to making any request to the surety to terminate or cancel such bond, shall notify SBA in writing of its intent to terminate or cancel the bond. Each Licensee shall notify SBA immediately in writing of any claim for loss filed under the bond with the surety. Such notifications to SBA shall be by certified mail addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

4. AMOUNTS

The minimum amount of fidelity bond for each Licensee acceptable to SBA shall be based upon the total amount of the assets of the Licensee plus the unpaid balance of loans and investments which the Licensee has contracted to service for others, as follows:

Assets plus loans and investments serviced for others:

	Minimum coverage
Up to $400,000	$25,000
$400,001 to $500,000	30,000
$500,001 to $750,000	40,000
$750,001 to $1,000,000	50,000
$1,000,001 to $2,000,000	75,000
$2,000,001 to $3,000,000	100,000
$3,000,001 to $4,000,000	125,000
$4,000,001 to $5,000,000	150,000
$5,000,001 to $7,500,000	175,000
$7,500,001 to $10,000,000	200,000
$10,000,001 and over	(1)

[1] $200,000 plus $10,000 for each $1 million or fraction thereof over $10 million, except that no Licensee shall be required to provide and maintain a fidelity bond in an amount greater than $1 million.

5. BANK CUSTODIAN

Notwithstanding the provisions of paragraph 4 above, if a Licensee's portfolio securities are held by a commercial bank, which is a member of the Federal Deposit Insurance Corporation, as custodian under a custodianship agreement, such commercial bank's fidelity bond may be construed as furnishing the Licensee with adequate surety protection for securities and funds in its custody: *Provided*, That the amount of assets, as defined in paragraph 4, in the possession of the Licensee at any one time, or $400,000, whichever is greater, is covered by a prescribed fidelity bond.

ADDENDUM II—REALIZATION AND USE OF INCOME AND GAINS

1. PURPOSE

This addendum provides guidance to SBICs for the determination of the realization of operating income and gains on investments and the use of such profits for various corporate purposes.

2. RECOGNITION OF PROFIT

a. *Income from operations.* Licensees may, provided the collection of such income is reasonably assured:

(1) Treat income from dividends and fees as realized when a transaction is effected in the ordinary course of business, and

(2) Treat commitment income and interest income as realized when a transaction is effected, or through the passage of time.

b. *Gains from sales of assets.* Assets here considered include portfolio securities assets acquired in liquidation of loans and debt securities (including successor assets to those originally acquired in such liquidation), and those classified as other assets.

(1) Gain on the sale of assets when the sale represents a final transaction may be recognized as realized gain immediately when received by a Licensee in cash (money, checks, or negotiable money orders), demand certificates of deposit issued by banks which are members of the Federal Deposit Insurance Corporation, and/or negotiable direct obligations of the U.S. Government.

(2) That portion of cash installment payments representing gain may also be recognized as realized gain immediately as such payments are received when the installment feature is all that prevents characterization of the transaction as final.

(3) Any transaction with recourse upon the Licensee or involving any understanding, agreement, option, privilege, or other rights to repurchase by and/or resell to the Licensee shall not be considered a final transaction.

(4) Any reacquisition of the assets by the Licensee, whether or not the result of prior agreement or rights, shall be construed by SBA as a nullification of the finality of the original sale transaction.

(5) Any gain on sale of assets which does not qualify as realized gain in accordance with the foregoing shall be deferred pending such realization.

3. USE OF PROFITS

a. Only profits realized in accordance with the foregoing may be:

(1) Used for obtaining loan funds from SBA,

(2) Used for payment of dividends, or

(3) Treated as realized profits for improvement of bargaining position in mergers.

b. Profits realized as above may be used also for correcting capital impairment. In addition, noncash gain on the sale of assets to a bona fide purchaser, which gain has been deferred, may be recognized by SBA for the purpose of correcting capital impairment. This recognition will not be granted if uncertainty as to the ultimate realization of profit is so great that business prudence, as well as generally accepted accounting principles, would preclude such recognition of gain. Circumstances such as any of the following would raise a serious question as to the propriety of the current recognition of any gain:

(1) Consideration received in exchange for assets disposed of consists of capital stock having no quoted market value, or other noncash real or personal property which cannot be reasonably evaluated.

(2) Evidence of financial weakness of the purchaser.

(3) Substantial uncertainty as to the amount of costs and expenses to be incurred.

(4) Substantial uncertainty as to the amount of proceeds to be realized because of form of consideration or method of settlement; for example, nonrecourse notes, non-interest-bearing notes, purchaser's stock, and notes with optional settlement provisions, all of interminable value.

(5) Amount and/or time of payment indeterminate, being dependent upon future sales or other action.

(6) Retention of effective control of the asset by the Licensee.

(7) Limitations and, restrictions on the purchaser's profit and on development or disposition of the asset.

(8) Simultaneous sale and repurchase by the same or affiliated interest.

(9) Concurrent loan to or other financing of the purchaser.

(10) Small, or no down payment.

(11) Simultaneous sale and leaseback of asset

4. PROCEDURE FOR OBTAINING SBA RECOGNITION OF NONCASH GAIN FOR THE PURPOSE OF CORRECTING CAPITAL IMPAIRMENT

The Licensee should submit to SBA, in triplicate, a summary statement identifying each sale transaction involved, giving the following particulars:

a. Portfolio securities, acquired (or successor) assets, or other assets parted with and their cost less allowance for losses, proceeds obtained, and net gain or loss.

b. Name of purchaser and affiliation (if any) with Licensee.

c. Description and value of consideration received, including terms and collateral (if any) of any debt instruments, and

d. Provisions of any rights or privileges obtained or granted by the Licensee.

5. ACCOUNTING REQUIREMENTS

a. *Income from operations.* Restrictions on the classification of income as realized and procedures to be followed when such amounts are not to be considered as realized are found in the notes to income accounts Nos. 500, 512, 516, 532, in the System of Account Classifications for Small Business Investment Companies (Part 111 of the regulations).

b. *Gains from sales of assets.* (1) Any profit on the sale of assets which does not qualify as realized gain in accordance with section 2.b of this addendum should be credited to account No. 383. Other Deferred Credits, pending such realization.

(2) SBA recognition of noncash gain on sales of assets shall not constitute approval to transfer the amount involved from account No. 383 to the appropriate gain accounts, as such action shall remain dependent on meeting the qualifications in section 2.b of this addendum.

APPENDIX 2—INSTRUCTIONS FOR PREPARATION OF THE FINANCIAL REPORT, SBA FORM 468

GENERAL

There are set forth herein the instructions for preparation of the Financial Report, SBA Form 468, which report is required by Small Business Administration regulations to be filed wtih SBA by each licensed small business investment company at the end of each fiscal year, and at such other times as SBA may request. The Financial Report filed by

each Licensee shall present fairly the financial position of the Licensee as of the close of the period covered by the report and the results of the Licensee's operations for such period, and shall be prepared in accordance with these instructions. The accounts referred to by account number in these instructions are those prescribed by SBA in the System of Account Classifications for Small Business Investment Companies as set forth in Part 111 of this chapter.

The Financial Report, SBA Form 468, shall be filed in triplicate with the Investment Division, Small Business Administration, 1441 L Street NW., Washington, DC 20416, on or before the last day of the third month following the close of the period covered by the report (in the case of an audited report).

Licensees which are registered investment companies should refer to the rules promulgated by the Securities and Exchange Commission, 500 North Capitol Street, Washington, DC 20549, for the official requirements as to financial reports to be filed with SEC and the time allowed for filing.

The Financial Report, SBA Form 468, requires a statement of financial condition, statement of surplus reconciliations, statement of income and expense, statement of realized gain or loss on investments, statement of changes in financial position and supporting schedules. If any statement or schedule is not applicable, it is still required to be filed but should be marked "N/A" or "Not Applicable."

When the Licensee has a wholly owned subsidiary organized solely for the purpose of rendering management consulting services, financial reports submitted to SBA by the parent Licensee shall reflect consolidated figures covering the activities of both the parent Licensee and its subsidiary corporation.

When the Licensee has one or more branch offices, the data contained in the basic financial statements and all supporting schedules shall comprise a combination of the figures for the principal office and all branches. All money amounts required to be shown in the financial statements and schedules shall be expressed in whole dollars. Appropriate adjustments of individual amounts shall be made for the fractional part of a dollar so that the items will add to the totals shown.

HEADING

Set forth in the appropriate spaces the information called for representing the identification and the principal-office address of the Licensee. As the employer identification number, enter the number assigned to the Licensee by the U.S. Treasury Department. If such number has not yet been assigned, an Application for Employer Identification Number, Form SS-4, shall be submitted to the U.S. Director of Internal Revenue for the area in which the Licensee's principal office is located.

STATEMENT OF FINANCIAL CONDITION

Assets

Items:

1. *Cash.* State the total of the balances contained in accounts Nos. 100 through 120.

2. *U.S. Government obligations, insured savings, and time certificates of deposit.* State the total of the balances contained in accounts Nos. 130 through 137.

3. *Notes receivable.* State the balance contained in account No. 140.

4. *Accounts receivable.* State the balance contained in account No. 150.

(a) *Less: Allowance for uncollectibles* (applicable to items 3 and 4). State the balance contained in account No. 151.

5. *Accrued interest receivable.* State the balance contained in account No. 160.

(a) *Less: Allowance for uncollectibles.* State the balance contained in account No. 161.

6. *Due from directors, officers, and employees.* State the balance contained in account No. 255.

7. *Funds in escrow and other current assets.* State the balance contained in account No. 179 and the current portion of account No. 220.

8. *Total short-term assets.* Enter the total of the appropriate amounts opposite items 1, 2, 4(a), 5(a), 6, and 7.

9. *Loans (section 305).* State the balance contained in account No. 170.

(a) *Less: Amount sold with recourse.* State the balance contained in account No. 310.

(b) *Less: Allowance for uncollectibles.* State the balance contained in account No. 171.

(c) *Less: Unearned discount, fees, etc.* State the balance contained in account No. 173.

10. *Debt securities of SBCs (section 304).* State the total of the balances contained in accounts Nos. 180 and 184.

(a) *Less: Amount sold with recourse.* State the total of the balances contained in accounts Nos. 312 and 314.

(b) *Less: Allowance for losses.* State the balance contained in account No. 185.

(c) *Unearned discount, fees, etc.* State the balance contained in account No. 187.

11. *Capital stock of SBCs (section 304).* State the total of the balances contained in accounts Nos. 190 and 192.

(a) *Less: Allowance for losses.* State the balance contained in account No. 193.

12. *Warrants, options and other stock rights, acquired from SBCs (section 304).* State the balance contained in account No. 196.

(a) *Less: Allowance for losses.* State the balance contained in account No. 197.

13. *Assets acquired in liquidation of loans and debt securities.* State the balance contained in account No. 200.

(a) *Less: Accumulated depreciation.* State the balance contained in account No. 203.

(b) *Less: Mortgages payable.* State the balance contained in account No. 318.

(c) *Less: Allowance for losses.* State the balance contained in account No. 201.

14. *Amounts due from debtors on sale of assets acquired in liquidation of loans and debt securities.* State the balance contained in account No. 210.

(a) *Less: Allowance for uncollectibles.* State the balance contained in account No. 211.

15. *Total loans and investments.* Enter the total of the appropriate amounts opposite items 9(c), 10(c), 11(a), 12(a), 13(c), and 14(a).

16. *Corporate premises owned and furniture and equipment.* State the total of the balances contained in accounts Nos. 230, 240, and 242.

(a) *Less: Accumulated depreciation.* State the total of the balances contained in accounts Nos. 231 and 241.

17. *Organization costs.* State the balance contained in account No. 256.

18. *Other.* State the total of the balances contained in accounts Nos. 140, 220 (noncurrent portions), and 257.

19. *Total other assets.* Enter the total of the appropriate amounts opposite items 16(a), 17, and 18.

20. *Total.* Enter the total of items 8, 15, and 19.

Liabilities, Capital Stock, and Surplus

21. *Accounts payable.* State the balance contained in account No. 340.

22. *Accrued interest payable.* State the balance contained in account No. 350.

23. *Accrued taxes on income.* State the total of the balances contained in accounts Nos. 354.1, 354.2, etc.

24. *Other accrued expenses.* State the balance contained in account No. 358.

25. *Dividends payable.* State the total of the balances contained in accounts Nos. 360 through 364.

26. *Employee taxes withheld.* State the balance contained in account No. 370.

27. *Unapplied receipts and trust receipts.* State the total of the balances contained in accounts Nos. 374 and 378.

28. *Other.* State the total of the balances contained in accounts Nos. 320, 381, and 383 (portions applicable).

29. *Total short-term liabilities.* Enter the total of items 21 through 28.

30. *Notes payable to SBA.* State the balance contained in account No. 300.

31. *Notes payable to other than SBA, guaranteed by SBA.* State the balance contained in account No. 315.

32. *Notes payable to other than SBA, not guaranteed by SBA.* State the balance contained in account No. 316.

33. *Mortgages payable for funds borrowed.* State the balance contained in account No. 317.

34. *Other.* State the total of the balances contained in accounts Nos. 320, 381, and 383 (portions applicable).

35. *Debentures payable issued to SBA.* State the balance contained in account No. 301.

36. *Total liabilities.* Enter the total of the appropriate amounts opposite items 29, 30, 33, 34, and 35.

37. *Capital stock.* State the total of the balances contained in accounts Nos. 400 through 404 minus the balances contained in accounts Nos. 405 through 409.

38. *Paid-in surplus.* State the balance contained in account No. 420.

39. *Less: _____ shares of treasury stock at cost.* State the total of the balances contained in accounts Nos. 415 through 419.

40. *Total.* Enter the total of items 37 and 38 minus item 39.

41. *Capital stock subscribed.* State the total of the balances contained in accounts Nos. 410 and 411.

(a) *Less: Subscriptions receivable.* State the total of the balances contained in accounts Nos. 413 and 414.

42. *Total stockholders' paid-in capital and paid-in surplus.* Enter the total of the appropriate amounts opposite items 40 and 41(a).

43. *Retained earnings.* State the balance contained in the account No. 425.

44. *Appropriated retained earnings.* State the balance contained in account No. 427.

45. *Total capital stock and surplus.* Enter the total of the appropriate amounts opposite items 42 and 44.

46. *Total.* Enter the total of items 36 and 45.

Memorandum footnote. Show in the space provided the market or fair value of loans and investments (shown at cost less allowance for losses in item 15 of the Statement of Financial Condition). In determining the market or fair value of portfolio securities (including securities which may be readily acquired through exercise of rights), securities for which market quotations are readily available shall be valued at the market bid price, provided the securities are registered, or readily registrable, and salable, and further provided that, in the opinion of the board of directors, the bid price could be realized on immediate liquidation of the investment.

Securities other than those referred to above shall be at cost less allowance for probable losses unless, because of steady progress in the affairs of the portfolio company, an increase above cost to the small

business investment company is clearly indicated in the SBIC's equity in the book value of the portfolio company's securities as shown on the portfolio company's books. In the latter case the securities may be valued at fair value as determined in good faith by the board of directors.

The value of loans and investments determined in accordance with the foregoing shall be reduced for purposes of this report by the amount of what would be an appropriate provision for taxes in respect of the unrealized appreciation included in the determined value.

In column (10) of Schedules 1 through 4, and column (8) of Schedule 7, identify with an asterisk each security which was valued above cost in arriving at the amount shown as market or fair value of loans and investments.

Footnote on contingent liabilities. Complete the footnote on page 2, at the end of the Statement of Financial Condition, which indicates the total amount of all contingent liabilities of the company. This amount shall be the same as the grand total of Schedule 12 of the report.

STATEMENT OF SURPLUS RECONCILIATIONS

Set forth in this statement all activities in accounts for paid-in surplus, retained earnings, and appropriated retained earnings during the fiscal year to date, showing opening balances, additions and deductions, and balances at close of the period. State separately the various additions and deductions, describing clearly the nature of the transactions out of which the items arose. Net income or loss from page 3 should be labeled "from net income, or (loss)" and realized gain or loss on investments from page 4 should be labeled "from net realized gain or (loss) on investments."

STATEMENT OF INCOME AND EXPENSE FOR THE FISCAL YEAR TO DATE

Income

Item

1. *Commitment income.* State the balance contained in account No. 500.

2. *Interest on loans.* State the balance contained in account No. 512.

3. *Interest on debt securities.* State the balance contained in account No. 516.

4. *Interest on invested idle funds.* State the balance contained in account No. 510.

5. *Interest income—other.* State the balance contained in account No. 520.

6. *Management consulting service fees.* State the balance contained in account No. 532.

7. *Investigation and service fees charged other lenders.* State the balance contained in account No. 534.

8 *Application and appraisal fees.* State the balance contained in account No. 536.

9 *Dividends on capital stock of SBCs.* State the balance contained in account No. 540.

10. *Sharings in income or revenue of SBCs.* State the balance contained in account No. 541.

11. *Income less expense of $_____ from assets acquired in liquidation of loans and debt securities.* State the balance in account No. 582 minus the balance in account No. 710 Show the balance contained in account No. 710 as a separate item in the space provided for the expense.

12. *Other income.* State the balance contained in account No. 584.

13. *Total income.* Enter the total of the appropriate amounts opposite items 1, 5, 8, 10, and 12.

Expenses

14. *Commitment expense.* State the balance contained in account No. 600.

15. *Interest on obligations payable to SBA.* State the balance contained in account No. 610.

16. *Interest on obligations payable to other than SBA.* State the balance contained in account No. 622.

17. *Stock record and other financial expenses.* State the balance contained in account No. 642.

18. *Total financial expenses.* Enter the total of items 14 through 17.

19. *Advertising and promotional costs.* State the balance contained in account No. 650.

20. *Appraisal and investigation costs.* State the balance contained in account No. 651.

21. *Auditing and examination costs.* State the balance contained in account No. 652.

22. *Communications.* State the balance contained in account No. 653.

23. *Cost of space occupied.* State the balance contained in account No. 654.

24. *Depreciation of corporate premises owned, furniture, and equipment.* State the balance contained in account No. 655.

25. *Directors' and stockholders' meetings costs.* State the balance contained in account No. 657.

26. *Insurance.* State the balance contained in account No. 658.

27. *Investment adviser costs.* State the balance contained in account No. 660.

28. *Legal services.* State the balance contained in account No. 661.

29. *Salaries of officers.* State the balance contained in account No. 663.1.

30. *Salaries of employees.* State the balance contained in account No. 663.2.

31. *Taxes, excluding income taxes.* State the balance contained in account No. 664.

32. *Travel.* State the balance contained in account No. 665.

33. *Employee benefits expense.* State the balance contained in account No. 670.

34. *Organization expense.* State the balance contained in account No. 672.

35. *Miscellaneous operating expenses.* State the balance contained in account No. 679.

36. through 39. (For unclassified items.)

40. *Total operating expenses.* Enter the total of items 19 through 39.

41. *Other expenses.* State the balance contained in account No. 715.

42. *Total expenses.* Enter the total of items 18, 40 and 41.

43. *Net operating income before provision for probable losses and income taxes.* Enter the balance resulting from the deduction of item 42 from item 13.

44. *Provision for probable losses on receivables.* State the balance contained in account No. 680.

45. *Provision for probable losses on portfolio securities.* State the balance contained in account No. 682.

46. *Provision for probable losses on assets acquired in liquidation of loans and debt securities.* State the balance contained in account No. 684.

47. *Provision for probable losses on amounts due from debtors on sale of assets acquired in liquidation of loans and debt securities.* State the balance contained in account No. 686.

48. *Net operating income before provision for income taxes.* Enter the balance resulting from the deduction of the appropriate amount opposite item 47 from item 43.

49. *Provision for Federal income taxes—Net income.* State the balance contained in account No. 720.1.

50. *Provision for State and other income taxes.* State the balance contained in account No. 720.2.

51. *Net income (loss) from operations.* Enter the balance resulting from the deduction of the appropriate amount opposite item 50 from item 48.

NOTE: The Statement of Income and Expense provides only for income and expenses from operations.

Extraordinary Income or Loss from transactions not in the ordinary course of operations shall be credited directly to retained earnings.

STATEMENT OF REALIZED GAIN OR LOSS ON INVESTMENTS

1. *U.S. Government securities.* Show the aggregate cost, aggregate net proceeds, and net gain or net loss on the sale or other disposition of U.S. Government obligations, direct and fully guaranteed.

2. *Debt securities of SBCs.* Show the aggregate cost less allowance for losses, aggregate net proceeds, and net gain or loss on the sale or other disposition of debt securities of small business concerns.

3. *Capital stock of SBCs.* Show the aggregate cost less allowance for losses, aggregate net proceeds, and net gain or loss on the sale or other disposition of capital stock of small business concerns.

4. *Warrants, options, and other stock rights acquired from SBCs.* Show the aggregate cost less allowance for losses, aggregate net proceeds, and net gain or loss on the sale or other disposition of warrants, options, and other stock rights acquired by the company from small business concerns.

5. *Assets acquired in liquidation of loans and debt securities.* Show the aggregate cost less allowance for losses and mortgages payable, aggregate net proceeds, and net gain or loss on the sale or other disposition of assets acquired in liquidation of loans and debt securities of small business concerns. The aggregate cost shown for this item shall be the same as that recorded in the books of account on the basis determined by the board of directors from among (1) bid-in price of the property, (2) agreed consideration for the property, and (3) fair appraised value of the property, but not to exceed the total amount of the related loan or debt security involved.

6. *Other.* Show the aggregate cost less allowance for losses, aggregate net proceeds, and net gain or loss on the sale or other disposition of any investments not included in items 1 through 5.

7. *Net gain and/or loss on investments.* Enter the net total of items 1 through 6.

8. *Combined net gain (loss) on investments.* Enter the balance resulting from the deduction of item 7, column (5) from item 7, column (4).

9. *Add realized gain for current year from prior sales of investments (deferred credits).* State the amount of deferred gain of prior years transferred to gain accounts in the current year.

10. *Less portion of gain not realized in cash, demand certificates of deposit issued by FDIC-member banks, and/or negotiable direct obligations of the U.S. Government.* State the amount of the above gain represented by proceeds other than cash, demand certificates of deposit issued by FDIC-member banks, and/or negotiable direct obligations of the U.S. Government.

11. *Net realized gain (loss) on investments before provision for income taxes.* Enter the balance resulting from the addition of item 9 and deduction of item 10 from item 8.

12. *Federal income taxes—Net realized gain on investments.* State the amount of estimated Federal income taxes applicable to net realized gain on investments for the fiscal year to date.

13. *State and other income taxes—Net realized gain on investments.* Show the amount of estimated State and other non-Federal income taxes applicable to net realized gain on investments for the fiscal year to date.

14. *Total provision for income taxes.* Enter the total of items 12 and 13.

15. *Net realized gain (loss) on investments.* Enter the balance resulting from the deduction of item 14 from item 11.

NOTE: Describe the transactions in this statement in accordance with the instructions set forth in the note at bottom of the form.

STATEMENT OF CHANGES IN FINANCIAL POSITION

Part 1—Source of Funds

Item

1. *Net income (loss) from operations.* Enter the amount of Item 51 shown in the Statement of Income and Expense.

2. *Net realized gain (loss) on investments.* Enter the amount of Item 15 shown on the Statement of Realized Gain or Loss on Investments (page 4 of SBA Form 468).

3. *Total net income.* Enter the total of Items 1 and 2.

4. *Provision for probable losses.* Enter the total amount of Items 45, 46, and 47 shown in the Statement of Income and Expense. (Excludes Item 44—Provision for Probable Losses on Receivables.)

5. *Depreciation and amortization.* Enter the amount of Item 24 and any other amounts of depreciation or amortization contained in the Statement of Income and Expense.

6. *Total funds provided by net income.* Enter the total of Items 3, 4, and 5 of this statement.

7. *Extraordinary income.* Enter amount of income from transactions not in the ordinary course of operations. Explain such transaction in detail.

8. *From repayments and sales of loans.* Enter the total of column 7 (cash deductions) of Schedule 1.

9. *From repayments and sales of debt securities.* Enter the total of column 7 (cash deductions) of Schedule 2.

10. *From repayments and sales of capital stock.* Enter the total of column 7 (cash deductions) of Schedule 3.

11. *From repayments and sales of warrants, options and other stock rights.* Enter the total of column 7 (cash deductions) of Schedule 4.

12. *From repayments and sales of assets acquired in liquidation and amounts due from debtors on sale of assets acquired in liquidation.* Enter the total principal reduction for the period resulting from repayments and sales.

13. *From sale of licensees capital stock.* Enter the capital stock increase for the period resulting from sales for cash and capital stock subscriptions paid for in cash.

14. *Paid-in surplus.* Enter the increase for the period resulting from cash donations.

15. *Funds borrowed from SBA.* Enter the amount borrowed during the period.

16. *Funds borrowed from banks.* Enter the amount borrowed during the period. Do not include any borrowings reflected in Short-Term Liabilities—Items numbered 21 through 28 in SBA Form 468 Page 2.

17. *Other funds borrowed.* Identify and enter the amount borrowed during the period on mortgages and other long term borrowings not accounted for elsewhere.

18. *Total source of funds.* Enter the total of Items 6 through 17.

19. *Funds disbursed for loans.* Enter the total of column 5 (cash additions) of Schedule 1.

20. *Funds disbursed for debt securities.* Enter the total of column 5 (cash additions) of Schedule 2.

21. *Funds disbursed for capital stock of SBCs.* Enter the total of column 5 (cash additions) of Schedule 3.

22. *Funds disbursed for warrants, options and other stock rights.* Enter the total of column 5 (cash additions) of Schedule 4.

23. *Funds disbursed for other asset acquisitions.* Identify and enter the total increase in other asset acquisitions for the period involving cash transactions.

24. *Repayment of borrowed funds to SBA.* Enter the total principal paid during the period.

25. *Repayment of borrowed funds to banks.* Enter the total principal paid during the period.

26. *Repayment of borrowed funds to others.* Enter the total principal paid during the period on mortgages and other long-term debts.

27. *Funds disbursed for redemption of licensee's stock.* Enter the total paid during the period.

28. *Payment of dividends.* Enter the total paid for dividends during the period.

29. *Extraordinary expenses.* Identify and enter the amount of expenses paid from transactions not in the ordinary course of operations.

30. *Total disposition of funds.* Enter the total of Items 19 through 29.

31. *Net increase or (decrease) in funds available.* Enter the difference between Item 18 and Item 30.

32. *Funds available—At beginning of period.* Enter the total short-term assets (SBA Form 468, Page 1, Item No. 8) for the immediate prior year less total Short-Term Liabilities (SBA Form 468 Page 2 Item No. 29) for the same date.

33. *Funds available—At end of period.* Enter the total of Items 31 and 32.

Part 2—Changes in Financial Position From Noncash Transaction

Transactions not involving an outlay of cash contained in Balance Sheet Items numbered 9 through 46 on pages 1 and 2 of SBA Form 468 must be fully described in general journal entry form indicating the classification of accounts affected and the dollar amounts recorded.

SCHEDULE 1—LOANS (SECTION 305)

The items to be listed in this schedule shall include all loans held, made, or otherwise obtained, or disposed of by the company during the fiscal year to date setting forth the pertinent data indicated by the column heading. The reporting company's portion of participation in loans shall be included.

List each loan by employer identification number; owner group code number designating the group classification of the principal ownership of the small business concern as follows: (0) Negroes; (1) Puerto Ricans; (2) American Indians; (3) Spanish Americans; (4) Asians (Japanese, Chinese, Koreans, Filipinos); (5) Eskimos and Aleuts; (6) Undetermined and (7) Others—including whites; financing number; interest rate; Standard Industrial Classification code; name of financed small business concern, together with street address, city, State, zip code, and county in which located; date and maturity date; principal balance at beginning of period; cash additions during period; noncash additions during period (include refinancing); cash deductions during period; noncash deductions during period; and principal balance at close of period. The total in column (9) shall agree with Item 9 of the Statement of Financial Condition.

Show in column (10) the market value, or fair value as determined by the board of directors, of each loan which is determined to be worth less than the cost amount shown for it in column (9) minus any allowance for losses established for it. Any loan for which an allowance for losses has been established shall not be listed in column (10) at any value higher than cost less such allowance.

An explanatory notation or footnote shall be entered in the schedule with respect to any loan (or any interest therein) obtained from another Licensee.

Treat multiple disbursements under the same financing agreement as a single financing. Show the total of all loan financing on the last sheet of this schedule.

In column (1) enter the employer identification number of each listed small business concern; if a concern does not have such number, it should obtain one by filing Form SS–4 with the U.S. Director of Internal Revenue for the area in which the concern is located. Insert the appropriate owner group code number, in parentheses, following the employer identification number of each small business concern.

Enter for each listed small business concern the four-digit Standard Industrial Classification Code of the principal industry in which the concern is engaged; refer to the SIC Manual issued by the Bureau of the Budget.

If the Licensee has had more than one financing in the same category outstanding to the same small business concern (cumulative beginning with March 31, 1966, outstanding balances), each such similar financing should be assigned a financing number (1–2–3, etc.) for identification purposes, and this number should be shown in the applicable column on this report and on future reports in relation to the same financing. A number once assigned to a specific financing of a small business concern should never be reassigned to another financing in the same category to the same concern.

In column (9) identify each item "pledged" or "earmarked" by letter (P) or letter (E), as appropriate. Also, identify by the letter (V) each item qualifying under the regulations as venture capital and by the letters (SP) each item qualifying under the regulations as special discretionary porfolio. Show the total of all venture capital amounts on the last sheet of this schedule immediately under the "Totals" line at the foot of column (9). Show the total of all special discretionary portfolio amounts on the last sheet of this schedule immediately under the "Total venture capital".

SCHEDULE 2—DEBT SECURITIES (SECTION 304) (§ 107.302(B)(2) OF REGULATIONS)

The items to be listed shall include all debt securities held, acquired, converted, or disposed of during the fiscal year to date, setting forth the pertinent data indicated by the column headings. The reporting company's portion of participation in debt securities shall be included.

List each debt security by employer identification number; owner group code number designating the group classification of the principal ownership of the small business concern as follows: (0) Negroes; (1) Puerto Ricans; (2) American Indians; (3) Spanish Americans; (4) Asians (Japanese, Chinese, Koreans, Filipinos); (5) Eskimos and Aleuts; (6) Undetermined and (7) Others—including whites; financing number; interest rate; Standard Industrial Classification code; name of financed small business concern, together with street address, city, State, zip code, and county in which located; date and maturity date; principal balance at beginning of period; cash additions during period; noncash other additions during period; cash deductions during period; noncash deduction during period; and principal balance at close of period. The total in column (9) shall agree with Item 10 of the Statement of Financial Condition.

Show in column (10) the market value, or fair value as determined by the board of directors, of each debt security which is determined to be worth more than the cost amount shown for it in column (9) and each debt security which is determined to be worth less than the cost amount shown for it in column (9), minus any allowance for losses established for it. Any debt security for which an allowance for losses has been established shall not be listed in column (10) at any value higher than cost less such allowance.

Show in column (11) opposite each debt security financing the percentage of the financed small business concern's voting securities which has been and/or can be obtained by the Licensee through exercise of conversion privileges and/or stock purchase warrants or options received in connection with the specific financing. This percentage shall be computed without giving consideration to the possibility of simultaneous exercise of stock rights by other investment interests. Wherever a Licensee considers it important to disclose that its percentage of actual and potential ownership is affected by the probable action of others in exercising their stock rights, a footnote should be appended to the percentage figure arrived at by consideration of only the Licensee's action. In such footnote the percentage of actual and potential ownership giving consideration to the probable action of others should be set forth, together with an explanation including the names of the other investors who are likely to exercise their rights, the percentages of actual and potential ownership they hold, and the general terms of their stock rights.

An explanatory notation or footnote shall be entered in the schedule with respect to any debt security (or any interest therein) obtained from another Licensee.

Treat multiple disbursements under the same financing agreement as a single financing. Show the total of all debt security financing on the last sheet of this schedule.

In column (1) enter the employer identification number of each listed small business concern; if a concern does not have such number, it should obtain one by filing Form SS-4 with the U S. Director of Internal Revenue for the area in which the concern is located.

Insert the appropriate owner group code number, in parentheses, following the employer identification number of each small business concern.

Enter for each listed small business concern the four-digit Standard Industrial Classification Code of the principal industry in which the concern is engaged; refer to the SIC Manual issued by the Bureau of the Budget.

If the Licensee has had more than one financing in the same category outstanding to the same small business concern (cumulative beginning with March 31, 1966, outstanding balances), each such similar financing should be assigned a financing number (1-2-3, etc.) for identification purposes, and this number should be shown in the applicable column on this report and on future reports in relation to the same financing. A number once assigned to a specific financing of a small business concern should never be reassigned to another financing in the same category to the same concern.

In column (9) identify each item "pledged" or "earmarked" by letter (P) or letter (E), as appropriate. Also, identify by the letter (V) each item qualifying under the regulations as venture capital and by the letters (SP) each item qualifying under the regulations as special discretionary portfolio. Show the total of all venture capital amounts on the last sheet of this schedule immediately under the "Totals" line at the foot of column (9). Show the total of all special discretionary portfolio amounts on the last sheet of this schedule immediately under the "Total venture capital".

SCHEDULE 3—CAPITAL STOCK OF SBC'S

Furnish in this schedule a summary of all capital stock of small business concerns setting forth the pertinent data indicated by the column headings. The items to be listed shall include all capital stock of small business concerns held, acquired, converted, or disposed of during the fiscal year to date setting forth the pertinent data indicated by the column headings. The reporting company's portion of participation in investments shall be included.

List each investment by employer identification number; Owner Group Code number; financing number; Standard Industrial Classification code; name of financed small business concern, together with street address, city, State, zip code, and county in which located; date acquired, type and class, number of shares, etc.; balance at cost at beginning of period; cash additions during period; noncash additions during period at cost; cash deductions during period; noncash deductions during period at cost; and balance at cost at close of period.

The total in column (9) for capital stock of SBCs shall agree with Item 11 of the Statement of Financial Condition.

Show in column (10) the market value, or fair value as determined by the board of directors, of each investment which is determined to be worth more than the cost amount shown for it in column (9) and each investment which is determined to be worth less than the cost amount shown for it in column (9), minus any allowance for losses established for it. Any investment for which an allowance for losses has been established shall not be listed in column (10) at any value higher than cost less such allowance. Show in column (11) the percentage of ownership in the small business concern.

An explanatory notation or footnote shall be entered in the schedule with respect to any investment (or any interest therein) obtained from another Licensee.

Treat multiple disbursements under the same financing agreement as a single financing. Show the total of all capital stock on the last sheet of this schedule.

In column (1) enter the employer identification number of each listed small business concern; if a concern does not have such number, it should obtain one by filing Form SS-4 with the U.S. Director of Internal Revenue for the area in which the concern is located. Enter the appropriate Owner Group Code number in parentheses.

Enter for each listed small business concern the four-digit Standard Industrial Classification Code of the principal industry in which the concern is engaged; refer to the SIC Manual issued by the Bureau of the Budget.

If the Licensee has had more than one financing in the same category outstanding to the same small business concern (cumulative beginning with March 31, 1966, outstanding balances), each such similar financing should be assigned a financing number (1-2-3, etc.) for identification purposes, and this number should be shown in the applicable column on this report and on future reports in relation to the same financing. A number once assigned to a specific financing of a small business concern should never be reassigned to another financing in the same category to the same concern.

In column (9) identify each item "pledged" or "earmarked" by letter (P) or letter (E), as appropriate. Also, identify by the letter (V) each item qualifying under the regulations as venture capital and by the letters (SP) each item qualifying under the regulations as special discretionary portfolio. Show the total of all venture capital amounts immediately under the "Totals" line at the foot of column (9) on the last sheet of this schedule. Show the total of all special discretionary portfolio amounts on the last sheet of this schedule immediately under the "Total venture capital".

SCHEDULE 4—WARRANTS, OPTIONS AND OTHER STOCK RIGHTS ACQUIRED FROM SBCS

The items to be listed shall include all warrants, options and other stock rights acquired from SBCs (for which a cost has been determined separate from that of the financing instruments which they accompanied and/or for which there exists a market value, or a fair value as determined by the board of directors) which were held, obtained, surrendered, expired or sold during such period setting forth the pertinent data indicated by the column headings. If no separate cost, market value, or fair value has been determined, the warrants, options and other stock rights shall be listed with no value assigned. The reporting company's portion of participation in investments shall be included.

List each investment by employer identification number; Owner Group Code number; financing number; Standard Industrial Classification code; name of financed small business concern, together with street address, city, State, zip code, and county in which located; date acquired, type and class, etc.; balance at cost at beginning of period; cash additions during period; noncash additions during period at cost; cash deductions during period; noncash deductions during period at cost; and balance at cost at close of period.

The total in column (9) shall agree with Item 12 of the Statement of Financial Condition. Show in column (10) the market value, or fair value as determined by the board of directors, of each investment which is determined to be worth more than the cost amount shown for it in column (9) and each investment which is determined to be worth less than the cost amount shown for it in column (9), minus any allowance for losses established for it. Any investment for which an allowance for losses has been established shall not be listed in column (10) at any value higher than cost less such allowance.

Show in column (11) opposite each financing item the percentage of the financed small business concern's voting securities which has been and/or can be obtained by the Licensee through exercise of conversion privileges and/or stock purchase warrants or options received in connection with the specific financing, or which is represented by the financing item itself. This percentage shall be computed without giving consideration to the possibility of simultaneous exercise of stock rights by other investment interests. Whenever a Licensee considers it important to disclose that its percentage of actual and potential ownership is affected by the probable action of others in exercising their stock rights, a footnote should be appended to the percentage figure arrived at by consideration of only the Licensee's action. In such footnote the percentage of actual and potential ownership giving consideration to the probable action of others should be set forth, together with an explanation including the names of the other investors who are likely to exercise their rights, the percentages of actual and potential ownership they hold, and the general terms of their stock rights.

An explanatory notation or footnote shall be entered in the schedule with respect to any investment (or any interest therein) obtained from another Licensee.

Treat multiple disbursements under the same financing agreement as a single financing. Show the total of all, warrants, options, and other stock rights financing on the last sheet of this schedule.

In column (1) enter the employer identification number of each listed small business concern; if a concern does not have such number, it should obtain one by filing Form SS-4 with the U.S. Director of Internal Revenue for the area in which the concern is located.

Insert the appropriate owner group code number, in parentheses, following the employee identification number of each small business concern. In column enter for each listed small business concern the four-digit Standard Industrial Classification Code of the principal industry in which the concern is engaged; refer to the SIC Manual issued by the Bureau of the Budget.

If the Licensee has had more than one financing in the same category outstanding to the same small business concern (cumulative beginning with March 31, 1966, outstanding balances), each such similar financing should be assigned a financing number (1-2-3, etc.) for identification purposes, and this number should be shown in the applicable column on this report and on future reports in relation to the same financing. A number once assigned to a specific financing of a small business concern should never be reassigned to another financing in the same category to the same concern.

(d) In column (12) identify each item "pledged" or "earmarked" by letter (P) or letter (E), as appropriate. Also, identify by the letter (V) each item qualifying under the regulations as venture capital and by the letters (SP) each item qualifying under the regulations special discretionary portfolio. Show the total of all venture capital amounts immediately under the "Totals" line at the foot of column (9). Show the total of all special discretionary portfolio amounts on the last sheet of this schedule immediately under the "Total venture capital."

SCHEDULE 5—DETAILS OF CERTAIN LOANS (SECTION 305) AND INVESTMENTS (SECTION 305) LISTED IN SCHEDULES 1 THROUGH 4

Enter in this schedule all loans and debt securities shown in Schedules 1 and 2 and all investments shown in Schedules 3 and 4 concerning which any one or more of the following conditions exist:

1. New or additional financing has been furnished during the fiscal year to date, as shown in column (5) and (6) of Schedules 1 through 4.

2. The terms of existing financing have been amended and/or the related collateral has been changed during the fiscal year to date.

3. Any rescheduling, refinancing, or refunding of principal and/or the interest has occurred, or conversion of a delinquent item has taken place, during the fiscal year to date. (Full details on such events are to be furnished in column (6) or on an attached sheet.)

5. There is an outstanding SBA loan, SBA guarantee or a bank loan or other private loan, or SBA participation in such a private loan to the Licensee's portfolio concern.

List the items by employer identification number in column (1) and identify them by name of small business concern, type of financing, and financing number in columns (2), (3), and (4). In column (5) show the original principal amount or other cost. Details of the amortization plan and other significant provisions of the financing instruments, including a precise description of capital stock of SBCs, shall be set forth in column (6). The outstanding balance of any SBA direct loan, SBA participation loan, or SBA guaranteed loan to the Licensee's portfolio concern is to be shown in column (7). The Licensee is requested to obtain this information from the portfolio small business concern, if it is not already available in the Licensee's office. The value and description of collateral are to be set forth in column (8). Information as to the portion of such collateral assigned as security for the financing granted by the Licensee is required to be presented in column (8).

If any loans or debt securities earmarked or pledged to SBA are in default as to payment of principal or interest, or with respect to any other covenants of the financing agreements, the repayment delinquencies will, of course, be included in Schedule 6. Any other defaults are to be described in column (6) of Schedule 5. Such earmarked or pledged loans and debt securities shall be identified in the schedule by the letter (E) or (P), as appropriate. If no earmarked loans or debt securities are in default as to principal or interest payments, or as to any other covenants in the financing agreements, a statement to that effect shall be placed on Schedule 5.

SCHEDULE 6—ALLOWANCE FOR LOSSES ON PORTFOLIO SECURITIES—DELINQUENT LOANS AND DEBT SECURITIES

List in this schedule all loans and investments for which an allowance for losses has been established or allocated on a specific item basis and/or which (if loans or debt securities) are delinquent to the extent of having installment payments past due more than 1 month. Identify each item in column (1) by the employer identification number and name of the financed small business concern; indicate by appropriate letter in column (2) the type of financing (loan, debt security, stock, warrants, and options); and record the financing number in column (3) if there has been more than one financing of the same type with respect to the same small business concern.

In columns (4) through (8), show the opening balance of the allowance for losses on each security, the additions and deductions pertaining to such allowance, and the closing balance, all relating to the fiscal year to date. If there exists an overall allowance for losses, established on a percentage or other basis and not allocated to individual securities, the beginning and ending balances thereof, together with changes during the period, shall be shown appropriately on the "General Allowance" line at the bottom of the schedule. The grand total of column (8) shall equal the sum of items 9(b), 10(b), 11(a), and 12(a) in the Statement of Financial Condition.

Show in column (9) the principal balance or other cost, as of the close of the period, of each security listed on the schedule. In columns (10) and (11) show all installments of principal and/or interest past due more than one month on loans and debt securities. Such portfolio items shall be identified and classified in columns (1), (2), and (3), and any allowances for losses related thereto shall be included appropriately in the columns provided therefor. Any loans or debt securities earmarked or pledged to SBA shall be identified in the schedule by the letter (E) or (P), as appropriate. Show the totals of columns (10) and (11).

SCHEDULE 7—ASSETS ACQUIRED IN LIQUIDATION OF LOANS AND DEBT SECURITIES—ALLOWANCE FOR LOSSES

List and describe in this schedule, by former debtors (small business concerns), all assets carried during the fiscal year to date in the account for assets acquired in liquidation of loans (section 305) and debt securities (section 304 and § 107.302(b)(2) of the regulations). This will correctly represent only the reporting company's portion of such assets. The balance at the beginning of the reporting period, additions and deductions during the period, and balance at the close of the period shall be shown in columns (3), (4), (5), and (6). The allowance for losses established for the reporting company's portion of the assets held with reference to each small business concern shall be recorded in column (7). Current market value, or fair value as determined by the board of directors at the close of the period shall be shown in column (8). The totals of column (6) and (7) shall agree with Items 13 and 13(c), respectively, of the Statement of Financial Condition.

SCHEDULE 8—AMOUNTS DUE FROM DEBTORS ON SALE OF ASSETS ACQUIRED IN LIQUIDATION OF LOANS AND DEBT SECURITIES—ALLOWANCE FOR UNCOLLECTIBLES

Show in this schedule, by debtors, all accounts receivable, notes receivable, sales contracts, purchase money mortgages, etc., carried during the period in the account for amounts due from debtors on sale of assets acquired in liquidation of loans (section 305) and debt securities (section 304). The interest rate and other terms shall be given. The balances at the beginning and close of the period shall be shown, together with additions and deductions during such reporting period. Allowances for uncollectibles based upon an evaluation of the reporting company's portion of individual amounts due shall be recorded in column (9) opposite the name of the debtor. If a general allowance is utilized instead of individual allowances, it shall appear only at the bottom of column (9). The totals of columns (8) and (9) shall agree with Items 14 and 14(a), respectively, of the Statement of Financial Condition. Under column (2) identify the asset or assets originally acquired in liquidation to which the amount due relates.

SCHEDULE 9—PARTICIPATIONS AND JOINT FINANCING

Show in this schedule all financings in which the reporting company participated and all financings made jointly by the reporting company and one or more other lenders or investors during the fiscal year to date, or which were outstanding at any time during such period. Identify each item in column (1) by the employer identification number and name of the financed small business concern; indicate by appropriate letter in column (2) the type of financing (loan, debt security, stock, warrants, and options); and enter the financing number in column (3) if there has been more than one financing of the same type by the reporting company to the same small business concern.

In column (4) show the original total amount contributed by all parties in the participation or joint financing. The names of such participating or joint financing entities (including the name of the reporting company) shall be shown in column (5) with appropriate indication as to which is the initiating (sponsoring) entity.

Show in column (6), (7), or (8), as appropriate, the reporting company's outstanding principal balance, or other cost, of participation purchased, participation sold, or joint financing, as of the close of the period covered in the report. Enter in column (9) a description of collateral pertaining to each financing, together with information as to the percentage applicable to each party and as to any preferences agreed upon.

SCHEDULE 10—CASH, U.S. GOVERNMENT OBLIGATIONS, INSURED SAVINGS, AND TIME CERTIFICATES OF DEPOSIT

Show in Schedule 10a all cash on hand and in general funds demand deposits; funds in imprest bank accounts. Demand deposits are balances subject to withdrawal without notice and shall be in commercial banks which are members of the Federal Deposit Insurance Corporation. Cash items in process of collection represent those cash items which have been placed with banks for collection. Petty cash shall represent the full amount of the petty cash imprest fund.

List in Schedule 10b(1) all securities owned which have been issued or guaranteed by the U.S. Government, showing the name of the issuer and the title of each issue. Other required data, such as interest rate, call date, maturity date, and principal amount at par of bonds and notes, may be obtained by inspection of the securities or from records of securities pledged. The cost of the securities shall be shown in column (6) and the current market value thereof in column (7).

Show in Schedule 10b(2) all funds invested in insured savings accounts and all funds on time deposit evidenced by time certificates of deposit. Savings accounts shall be institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation. Time deposits shall include all time certificates of deposit held by the company in commercial banks which are members of the Federal Deposit Insurance Corporation.

SCHEDULE 11—DUE FROM DIRECTORS, OFFICERS, AND EMPLOYEES

Show in this schedule amounts due from directors, officers, and employees for advances made to them (listing name and title of debtor in column (1)). The unpaid balance of each amount due at the beginning of the fiscal year shall be shown in column (2); additions, writeoffs, and collections during the fiscal year to date shall be set out in columns (3), (4), and (5); and the balance at the close of the period shall be shown in column (6). The total of column (6) shall agree with Item 6 in the Statement of Financial Condition. An explanation shall be

cial Condition. An explanation shall be furnished for any amount written off or for any collection other than in cash.

SCHEDULE 12—COMMITMENTS, GUARANTEES, AND OTHER CONTINGENT LIABILITIES

Furnish in Schedule 12a, (1) commitments to small business concerns for equity financing under section 304 of the Act, as amended, (2) commitments to small business concerns for loans under section 305 of the Act, as amended, and (3) commitments to banks or other lenders for deferred participations in loans or commitments to small business concerns. Show the total amount of all commitments outstanding. Show the total of all venture capital commitments outstanding immediately under "Total commitments outstanding". Enter license number in the space allotted and enter owner group code number in parentheses alongside name of small business concern.

Furnish in Schedule 12b all obligations of portfolio concerns guaranteed by the company, showing (1) date of guarantee, (2) name of debtor small business concern, (3) name of lender, owner group code number, and (4) outstanding amount of guarantee. Show the total outstanding amount of all guarantees.

Set forth separately in schedule 12c with total, all other contingent liabilities.

SCHEDULE 13—OBLIGATIONS PAYABLE

Show in this schedule, by creditors, all obligations payable representing (1) debentures payable to SBA, (2) SBA direct loans, (3) guaranteed loans purchased by SBA, (4) loans guaranteed by SBA, (5) loans not guaranteed by SBA, (6) mortgages payable for funds borrowed, and (7) mortgages payable on assets acquired in liquidation of loans and debt securities. Such liabilities shall be grouped by the foregoing categories, and described in column (2), but subtotals are not required. Guaranteed loans purchased by SBA represent loans, originally financed by banks, which have been transferred to SBA through reassignment, transfer and delivery of the notes to SBA.

The interest rate and other terms of each obligation shall be recorded in columns (3) and (4); the unpaid balance at the beginning of the fiscal year and additions and deductions during the fiscal year to date shall be shown in columns (5), (6), and (7); and the balance payable at the close of the period, segregated between (a) amounts owed to SBA for funds borrowed and (b) amounts owed to others for funds borrowed and/or amounts representing mortgages payable on assets acquired in liquidation of loans and debt securities, shall be reflected in columns (8) and (9).

The total of column (8) shall agree with the total of Items 30 and 35 of the Statement of Financial Condition, and the total of column (9) shall agree with the total of Items 13(b), 31, and 32, and the appropriate amount opposite Item 33 of such statement.

SCHEDULE 14—CAPITAL STOCK OF LICENSE

Furnish in this schedule a complete description of the company's capital stock authorized, capital stock issued and outstanding, and data relating to special transactions involving capital stock.

In column (1) shall be described the type and class of each issue, such as common—$5 par, preferred (7 percent Series of 1969), etc. The par value or, for no-par stock, the stated value shall also be reported in column (1).

The number of shares authorized, whether issued or not, shall be reported in column (2).

The number of shares and amount, at par or stated value, of stock issued and not retired or canceled shall be reported in columns (3) and (4). The total of column (4) shall agree with Item 37 of the Statement of Financial Condition. The number of shares held as treasury stock shall be shown in column (5). Column (6) will represent the difference between column (3) and column (5).

Column (7) shall be the amount at par or stated value representing the number of shares outstanding as shown in column (6). The total of column (8) shall represent the amount of capital stock subscribed at the subscription price and shall agree with Item 41 of the Statement of Financial Condition.

In column (9) shall be reported the amount of subscriptions receivable, which shall agree in total with Item 41(a) of the Statement of Financial Condition.

Column (10) shall show the number of shares (other than those under option reserved for purchase by officers and employees, and column (11) shall show the number of shares reserved to cover options and other rights.

SCHEDULE 15—OPTIONS ON LICENSEE'S CAPITAL STOCK

Furnish in this schedule full information concerning outstanding capital stock options which have been granted by the company.

The holder of each option shall be identified in column (1). The number of shares optioned shall be shown in column (2). In column (3) shall be described the type and class of stock called for by the option, such as common—$5 par, preferred (7 percent Series of 1969), etc.

Column (4) shall show the grant and expiration dates of each option and column (5) shall set forth the price or prices at which each option is exercisable, together with the period during which each price applies.

Column (6) shall show the fair market value, per share, of stock called for by each option, at the date the option was granted. The price at which the option is exercisable as a percentage of fair market value, per share, of the optioned stock at date of granting shall be shown in column (7). Column (8) shall set forth the provisions made with respect to each option in the event of the optionee's death or retirement, or other circumstances.

The fair market value, per share, of stock called for at date the option was granted, if not ascertainable on the basis of actual market, shall be as determined by the board of directors.

SCHEDULE 16—SHAREHOLDERS, OFFICERS, AND DIRECTORS OF THE LICENSEE

Furnish in this schedule the information as required by the form regarding equity securities issued by the Licensee and regarding the Licensee's officers, directors, and manager.

In column (1) list: (a) Each person or company directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting securities of the company.

(b) Each person or company owning of record or being known to own beneficially more than 10 percent of any other class of equity securities of the company.

(c) Each officer, director, or manager of the SBIC. (List and identify all officers and directors, and manager regardless of whether or not they own any equity securities of the company.)

Show in column (2) whether each natural person listed in column (1) is an officer, director, manager of the Licensee or specific combination of any of the three and the total remuneration for the period received by each from the Licensee. Indicate in column (3) the type of business in which each listed person or company is engaged. Column (4) shall show the title of each class of stock owned by any person or company and column (5) shall indicate whether the securities of the specific class are owned both of record and beneficially, of record only, or beneficially only.

In columns (6), (7), and (8), respectively, show the number of shares of each class owned by each listed person or company, the total par or stated value of such shares, and the percentage of the total number of shares of this class outstanding which is represented by the shares owned by the particular person or company.

Summarize the foregoing information by class of equity security at the bottom of the schedule.

SCHEDULE 17—SUNDRY ASSETS

Show and explain in this schedule, by appropriate classification, the amounts of all sundry assets. Such assets will include: (1) Notes receivable; (2) accounts receivable, including dividends receivable; (3) accrued interest receivable; (4) funds in escrow pending closing of financing, and prepayments or deferred charges; and (5) unamortized organization costs.

Identify each item and describe the transaction out of which it arose, giving names of debtors and terms of debt instruments.

SCHEDULE 18—LOANS AND INVESTMENTS AND ACTUAL LOSS EXPERIENCE

Furnish in this schedule by categories shown, the total principal of all loans and investments disbursed (add back discount and fees, etc.) during the fiscal year and the total actual principal on all loans and investments lost (written off as uncollectible) during the fiscal year.

VERIFICATION OF THE FINANCIAL REPORT, SBA FORM 468

The verification of the Financial Report, SBA Form 468, shall bear the signature of the chief financial officer of the Licensee, or other officer authorized by the board of directors to sign in the event the chief financial officer is unavailable. A secretarial officer of the Licensee shall attest by signature to the fact that the minutes of a meeting of the board of directors show that the Financial Report, SBA Form 468, has been reviewed and approved by the board of directors. The date on which each signature is affixed shall be shown. All signatures on all copies of the Financial Report, SBA Form 468, submitted to SBA shall be original signatures in ink.

VERIFICATION OF LICENSEE'S STATEMENT ON IMPLEMENTATION OF PLAN FOR DIVESTITURE OF CONTROL OF SMALL BUSINESS CONCERNS

The verification of the Licensee's statement concerning prospects for divestiture of control, which is required by § 107.901(e) of the regulations to be furnished to SBA in triplicate with the annual financial report (SBA Form 468), shall bear the signature of a secretarial officer of the Licensee attesting to the fact that the minutes of a meeting of the board of directors show that such statement has been reviewed and approved by the board of directors. The date on which such signature is affixed shall be shown. The secretarial officer's signature on all copies of the Licensee's statement concerning prospects for divestiture of control submitted to SBA shall be an original signature in ink.

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